(1)

Supreme Court, U.S.
FILED

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No.

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IN THE

Supreme Court of the United States

JAMES G. AKERS,
Petitioner,

v.

CAROLYN P. BISHOP, *et al.*

On Petition For Writ of Certiorari
To The United States Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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Nashville, Tennessee 37220
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QUESTIONS PRESENTED FOR REVIEW

I - Whether the "ends of justice" require re-transfer of venue back to United States District Court for Middle Tennessee District-Nashville Division;

II - Whether the lower Courts abused Their discretion by refusing to "GRANT" Akers' "Demand for Judgement by Default" & "Motion for Partial Summary Judgement";

III - Whether the lower Courts erred by applying the *Heck v. Humphrey* and the *Rooker-Feldman* Doctrine as grounds for dismissal of the entire case for "failure to state a claim";

IV - Whether the lower Courts erred by applying various immunities as grounds for dismissal of the entire case;

V - Whether the lower Courts erred by Their application of the doctrines of "collateral estoppel" / *res judicata* as grounds for dismissal of case for "failure to state a claim";

VI - Whether the lower Courts abused Their discretion by refusing to properly apply the required "standard of review" with respect to Defendants' "Motion(s) to Dismiss";

VII - Whether the lower Courts abused Their discretion in the denial of Akers' fundamental rights to trial by a jury as the ultimate "finder of fact".

VIII - Whether the herein case should have, alternatively, been held "in abeyance" pending filing and disposition of Akers' "Petition for Writ of Prohibition" and/or Petition for Writ of Mandamus with this Honorable Court, seeking to set aside his convictions as unconstitutional.

IX - Whether the Sixth Circuit Court of Appeals abused Its discretion by refusing to accept Akers' "Petition for En Banc Determination" and subsequent "Motion for Reconsideration" pursuant to F.R.A.P. 26(a) & (c), F.R.A.P. 40(a)(1), 6 Cir. R. 45(b), and the "Due Process Clause' of the Fourteenth Amendment to the United States Constitution.

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(p) FCC Does 1 through 10 [known only as a group of individual "persons" at the Office of the Fayette (Kentucky) Circuit Court Clerk, Lexington, Kentucky, "associated-in-fact" and as of yet unidentified pursuant to discovery herein];

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STATEMENT OF JURISDICTION
[Pursuant to Supreme Court Rule 14(e)(i), (ii), (iv), & (v)]

Pursuant to ARTICLE III-§ 2, United States Constitution, this Honorable Court has exclusive appellate jurisdiction with respect to each an every one of those lower court decisions as depicted within "**CITATION OF OFFICIAL OPINIONS & ORDERS**", set forth immediately hereinabove.

JURISDICTION (U. S. DISTRICT COURT)
[Pursuant to Supreme Court Rule 14(g)(ii)]

The civil case from which the within "Petition for Writ of Certiorari" arises involves violations of Federal Law – some of which originated in Kentucky resulting in violations within Tennessee and, conversely, some originating in Tennessee and resulting in violations within Kentucky. Neither the State or Federal Courts within the states of Tennessee or Kentucky have both personal jurisdiction over all the parties and subject matter jurisdiction over all the issues.

Therefore, the Federal Courts have exclusive jurisdiction to hear and adjudicate this case pursuant to provisions of TITLE 18 U.S.C. § 1964(c), TITLE 18 U.S.C. § 1965(b), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3); and this Honorable Supreme Court of the United States of America has exclusive jurisdiction to hear and adjudicate the within "Petition for Writ of Certiorari", and consider all matters with respect thereto, pursuant to ARTICLE III-§ 2 of the United States Constitution inasmuch as the U. S. Court of Appeals for the Sixth Circuit has already disclaimed jurisdiction in Its "OPINION" and "ORDER" entered January 24, 2002 [*id.*]. There is no other tribunal in which to obtain the relief requested herein.

United States District for the Middle Tennessee District-Nashville Division, had both jurisdiction and venue pursuant to the provisions of TITLE 18 U.S.C. § 1964(c); TITLE 18 U.S.C. § 1965(b); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3).

INTRODUCTION

THE PETITIONER, James G. Akers, **without counsel**, seeks a writ of certiorari from this Honorable Supreme Court of the United States of America - thereby remanding Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle Tennessee District-Nashville Division, on November 21, 2000 [Case No. 3:00cv1142] back to that Court with instructions that venue shall remain therein, for full adjudication of all matters with respect thereto, for those reasons hereinafter set forth. **Alternatively, and in a separate action**, Akers will seek a writ of mandamus directing the United States Court of Appeals for the Sixth Circuit to honor the provisions of F.R.A.P. 26(a) & (c), F.R.A.P. 40(a)(1), 6 Cir. R. 45(b) **in conjunction with** the "Due Process Clause" of the Fourteenth Amendment to the U. S. Constitution.

On November 21, 2000, the Plaintiff-Appellant, James G. Akers (hereinafter "Akers"), without counsel, and in strict accordance with Title 28 U.S.C. § 1654, filed his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)", [D.E. #1] together with Akers' extensive and contemporaneous "MEMORANDUM & MEMORANDUM OF LAW" ["EXHIBIT USSC-11" hereto] and contemporaneously-filed "APPENDIX/RELEVANT EXHIBITS" (hereinafter "Akers Complaint"; "Akers' Memorandum"; & "Akers' Appendix", respectively) in the United States District Court for the Middle Tennessee District-Nashville Division. Jurisdiction was asserted pursuant to provisions of the Federal Statutes themselves; and venue was asserted on the basis that "the prevailing acts" as alleged in Akers' Complaint had taken place within the Federal District of Middle Tennessee District-Nashville Division. "Diversity of citizenship" of the parties, at most, a secondary consideration.

The within Petition for Writ of Certiorari follows the Sixth Circuit Court of Appeals' "ORDER" entered May 2, 2003, affirming dismissal of the **entire case** "**with prejudice**" by the United States District Court for the Eastern District of Kentucky-Lexington Division.

STATEMENT OF THE CASE

The factual allegations within Akers' Complaint, when coupled with applicable Constitutional, Statutory, and Common Laws of the United States of America and those "authorities" in support thereof as cited in Akers' Memorandum, will speak for themselves. Not even a single Defendant has attempted to controvert even a single averment and, in fact, they can not do so without placing themselves in peril of yet further sanctions and/or penalties under Federal Law. The "merits" of Akers' herein case are not even arguable.

The following are edited excerpts[2] from Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [Case No. 3:00-1142] as filed on November 21, 2000, in United States District Court for the Middle Tennessee District-Nashville Division.

> COUNT ONE - CONSPIRACY
>
> In about mid-July, 1993, in Fayette County, Kentucky, Defendants Pamela Miller, Katherine Witt, and LFG Does 1 thru 50 (known only as that group of individual "persons" and/or "public officials" within the Lexington-Fayette Urban County Government, "associated-in-fact") jointly devised, implemented, and effectuated a "conspiracy" in violation of TITLE 42 U.S.C. § 1985(2) & (3), *inter alia*, to unlawfully deprive that "class of persons" which included Plaintiff Akers of rights, privileges, and/or immunities secured by, *inter alia*, the Fourth, Fifth, & Fourteenth Amendments to the United States Constitution in that manner set forth in...¶¶E-12 and corresponding FN41 thereto of Akers' Memorandum; and which said "conspiracy" ultimately resulted in a "chain conspiracy" in furtherance thereof as detailed in hereinafter "COUNTS TWO, THREE, FOUR, TWELVE, & TWENTY-TWO"; and which "chain

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[2] Edited for clerical errors only and for format required by U.S .S.Ct. Rule 33.

conspiracy" ultimately resulted in commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and which "conspiracy", "chain conspiracies", "overt acts", and "unlawful imprisonment" ultimately resulted in injuries to Akers in his person and property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT TWO - CHAIN CONSPIRACY

At some time shortly following August 25, 1993, in Fayette County, Kentucky, herein Defendants Bishop, Fleming, Rushing, and CBT Does 1 thru 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., and herein "associated-in-fact"), jointly devised a "chain conspiracy" in violation of TITLE 18 U.S.C. § 1985(2) & (3), *inter alia*, in the furtherance of that "conspiracy" detailed in hereinabove "Count One", to unlawfully and/or unconstitutionally deprive Plaintiff Akers of his rights, privileges, and/or immunities secured by, *inter alia*, Article 1-Section 10 [Cl.1], & Article IV-Section 2 [Cl.1] of the United States Constitution in conjunction with the Fourth, Fifth, & Fourteenth Amendments thereto, in that manner as set forth in...¶¶E-12, E-13, E-14(d), E-16, E-17, E-23 through E-27, E-29, E-31 through E-36, E-38 through E-41, E-43, E-44, E-47, E-48, E-50(e), & E-50(f) with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and injuries to Akers in his person and property as are detailed in hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN".

COUNT THREE - CHAIN CONSPIRACY

On, or about, April 8, 1994, in Fayette County and/or Jessamine County, Kentucky, Defendants Layne and Shannon joined in the furtherance of that "chain conspiracy" as detailed in hereinabove "COUNT TWO" by committing specific "overt acts" in the furtherance thereof and in that manner set forth in...¶¶E-24 through E-27, E-29, E-31(a), E-31(b), E-31(c), E-34, E-38, E-40, E-43, E-44, & E-50(e) together and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in the commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN", respectively; the "unlawful imprisonment" of Akers as detailed in "COUNTS ELEVEN & FOURTEEN" hereof; and injuries to Akers in his person, property, and businesses as detailed within hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereof, respectively.

COUNT FOUR - CHAIN CONSPIRACY

On, or about, June 16, 1994, in Fayette County, Kentucky, and/or Jessamine County, Kentucky, the Defendants Vaughan, Kelly, and SCC Does 1 through 50 (known only as that group of individual "persons" at the Southland Church of Lexington, Inc., and "associated-in-fact") joined in the furtherance of that "chain conspiracy" as outlined in hereinabove "COUNTS TWO & THREE" by committing specific acts in furtherance thereof in that manner as set forth in...¶¶E-41, E-42, E-46, E-48, & E-50 together with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in the commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" of Akers as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and injuries to Akers in his person and his property as detailed in hereinafter "COUNTS

TWENTY-FOUR through TWENTY-SEVEN".

COUNT FIVE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, October 28, 1994, in Fayette County and/or Jessamine County, Kentucky, the Defendants Bishop, Fleming, Rushing, CBT Does 1 through 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., "associated-in-fact"), Layne, Shannon, Kelly, SCC Does 1 through 50 (known only as that group of "persons" at Southland Christian Church of Lexington, Inc., and "associated-in-fact"), collectively and in concert each with another, with a common scheme and purpose, devised, implemented, and effectuated an intentional course of conduct in furtherance of hereinabove "COUNTS TWO through FOUR", with the intent to deprive Plaintiff Akers of his rights, privileges, and immunities secured by, *inter alia*, Article I-Section 9 [Cl. 1], Article IV-Section 2 [Cl. 1], of the United States Constitution and the Fourth, Fifth, & Fourteenth Amendments thereto and, in addition thereto, *inter alia*, Article 1, Sections 3, 8, & 14 of the Constitution of Tennessee, by committing specific "overt acts" in furtherance thereof and in the manner as set forth in...¶¶E-51, E-54, E-56 through E-58, & E-61 through E-68 and all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in the "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and those injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT SIX - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, March 21, 1995, in Fayette County and/or Jessamine County, Kentucky, the Defendants Witt and FCS Does 1 through 30 (known only as a group of "persons" at the Fayette County Sheriff's office and

"associated-in-fact") joined in the furtherance of that "collective and concerted common scheme and purpose" and/or "chain conspiracy" as outlined in hereinabove "COUNT FOUR" by committing specific "overt acts" in furtherance thereof in that manner set forth in...¶¶E-61, E-63, E-77, & E-79 and all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in "unlawful imprisonment" of Akers as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN" and injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT SEVEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, March 21, 1995, in Fayette County and/or Jessamine County, Kentucky, the Defendants Clark, LFG Does 1 through 60 (known only as that group of "persons" at the Lexington-Fayette Urban County Government, "associated-in-fact"), and CAO Does 1 through 20 (known only as that group of "persons" at the Office of the Commonwealth's Attorney for the Twenty-second Judicial District of Kentucky, "associated- in-fact") joined in the furtherance of that "collective and concerted common scheme and purpose" and/or "chain conspiracy" as outlined in "COUNTS FOUR through SIX" hereinabove by committing specific "overt acts" in furtherance thereof in that manner set forth in...¶¶E-61, E-63, E-77, & E-79 together with all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in the "unlawful imprisonment" of Akers as detailed in "COUNTS ELEVEN & FOURTEEN" hereof and injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT EIGHT - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, November 1, 1995, in Fayette County, Kentucky, Defendant Red Corn joined in the "chain conspiracy" as detailed in hereinabove "COUNTS ONE through FOUR" and the aforesaid "collective and concerted common scheme and purpose" as detailed in hereinabove "COUNTS FIVE, SIX, and SEVEN" by committing specific "overt acts" in the furtherance thereof in that manner set forth in...¶¶E-82, E-83, E-84, E-85, E-86.I through E-86.X, E-89, E-90(a), E-90(b), E-90(d), E-92, E-94, & E-96 together with all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in "unlawful imprisonment" of Akers as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN" and injuries to Akers in his person and property as detailed in "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereof.

COUNT NINE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, November 1, 1995, in Fayette County, Kentucky, the herein Defendant Overstreet joined in that "chain conspiracy" as detailed in hereinabove "COUNTS ONE through FOUR" and that "collective and concerted common scheme and purpose" as detailed in hereinabove "COUNTS FIVE through EIGHT" by committing specific "overt acts" in the furtherance thereof in that manner set forth in...¶¶E-81, E-82, E-84, E-86.I through E-86.X, E-87, & E-88 and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in the "unlawful imprisonment" of Akers as detailed in "COUNTS ELEVEN & FOURTEEN" hereinafter and injuries to Akers in his person and property as detailed in "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereinafter.

COUNT TEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, March 5, 1997, in Franklin and/or Fayette County, Kentucky, Defendant Schwartz joined in that "chain conspiracy" as detailed in hereinabove "COUNTS ONE through FOUR" and "collective and concerted common scheme and purpose" detailed in hereinabove "COUNTS through EIGHT" by committing specific "overt acts" in the furtherance of those "conspiracies" and "overt acts" in furtherance thereof in that manner set forth in...¶¶E-91 & E-93 and all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" further contributed to the "unlawful imprisonment" of Akers and injuries to Akers in his person and in his property as detailed in "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereinafter.

COUNT ELEVEN - UNLAWFUL IMPRISONMENT

As the proximate result of those "conspiracies" and "chain conspiracies" detailed in hereinabove "COUNTS ONE through FOUR", and those "overt acts" in furtherance thereof as detailed in hereinabove "COUNTS FIVE through TEN", Akers was unlawfully imprisoned an aggregate of SEVEN HUNDRED TWENTY-EIGHT (728) DAYS in custody of the Fayette County [Kentucky] Sheriff, Davidson County [Tennessee] Sheriff, and Kentucky Department of Corrections, respectively, and thereby injured in his person and in his property in that manner detailed in...¶¶122(b), 125, & 126 of Akers Memorandum, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, *inter alia*.

COUNT TWELVE - CHAIN CONSPIRACY/COVER-UP

Beginning on, or about, February 27, 1998, and, then, continuing through July 7, 2000, in Fayette County, Jessamine County, and/or Franklin County, Kentucky, Defendants Bishop, Fleming, CBT Does 1 through 40 (known only as that group of "persons" at Central Bank

& Trust Company, Inc., "associated-in-fact"), Layne, Shannon, SCC Does 1 through 50 (known only as a group of "persons" at Southland Church of Lexington, Inc., and "associated-in-fact"), Vaughan, Red Corn, Overstreet, & Ferguson engaged in an intentional and continuing course of conduct in the furtherance of those "conspiracies" and/or "chain conspiracies" as detailed hereinabove "COUNTS ONE through FOUR", and those "overt acts" in furtherance thereof as detailed in hereinabove "COUNTS FIVE through TEN", by committing additional "overt acts" in furtherance and covert concealment thereof as detailed in...¶¶E-97, E-98, E-99, E-103, E-104, E-106, E-107, E-108, E-110.I through E-110.X, E-111 through E-117, E-119, & E-121 and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which such "overt acts" resulted in the further "unlawful imprisonment" of Akers as detailed in hereinabove "COUNT FOURTEEN" and those further injuries to Akers in his person and his property detailed in hereinafter "COUNTS TWENTY-FIVE & TWENTY-SIX", all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, *inter alia*.

COUNT THIRTEEN - FURTHER OVERTACTS/ COVER-UP

At some time after October 28, [1998], in Fayette County, Kentucky, FCC Does 1 through 10 (known only as a group of "persons" at the Office of the Fayette [Kentucky] County Court Clerk, and "associated- in-fact") joined in that "further chain conspiracy" as detailed in hereinabove 'COUNT TWELVE' by engaging in an intentional and continuing course of conduct in furtherance thereof by committing additional "overt acts" in the furtherance and covert concealment thereof by fraudulently redacting that portion of the "official state court record" as detailed in...¶¶E-110.V(k) of Akers Memorandum, thereby contributing to "unlawful imprisonment" of Akers as detailed in hereinabove "COUNT FOURTEEN" and further injuries to Akers in

his person and property as detailed in hereinafter 'COUNTS TWENTY-FIVE & TWENTY-SIX', in violation of TITLE 18 U.S.C. §§ 1983 & 1985, *inter alia*.

COUNT FOURTEEN - UNLAWFUL IMPRISONMENT

As the proximate result of those "conspiracies" & "chain conspiracies" detailed in hereinabove "COUNTS ONE through FOUR"; and "overt acts" in the furtherance thereof as detailed in hereinabove "COUNTS FIVE, SIX, SEVEN, EIGHT, TEN, & TWELVE", Akers was again "unlawfully imprisoned" in an aggregate of SIX HUNDRED SEVEN (607) DAYS in custody of the Fayette County [Kentucky] Sheriff and, subsequently, the Kentucky Department of Corrections, and thereby still further injured in his person and his property in that manner as detailed in ¶¶122(b), 125, & 126 of Akers' Memorandum, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, *inter alia*.

COUNT FIFTEEN - R.I.C.O. VIOLATIONS

In the course thereof hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of "persons" at the Southland Christian Church of Lexington, Inc., "associated-in-fact"), collectively and in concert each with another, with common scheme and purpose, devised, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in subparagraphs (a) through (d) hereinafter; and used income derived therefrom to acquire, maintain interests in, and/or participate in the conduct of the affairs of the "enterprises" known as Southland Christian Church of Lexington, Inc., and "Association-in-fact" (comprised of all the hereinabove "persons" named as "Defendants" herein, both jointly and severally, and "associated-in-fact") through a "pattern of racketeering activity"; the "activities" of

which said "enterprises" having and maintaining affects on both "interstate commerce" and "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific said "predicate acts" are as follows:

> (a) On or about May 12, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of "persons" at Southland Christian Church of Lexington, Inc., and herein "associated-in-fact"), collectively and in concert each with another, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the commission of "kidnaping" (in violation of Title 18 U.S.C. § 1201 and K.R.S. 508.130) in preparation for the hereinafter predicate acts depicted "COUNT FIFTEEN(b) & (c)" in that manner as set forth in...¶¶E-31, E-32, E-34, & E-38 together with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which such "predicate act" ultimately resulted in injuries to Akers in his businesses and property as detailed in...¶¶125 & 127 of Akers' Memorandum;
>
> (b) From about May 12, 1994 until June 29, 1994, in both Fayette County, Kentucky, Jessamine County, Kentucky, and/or Centre City, Minnesota, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of persons at the Southland Christian Church of Lexington, Inc., herein "associated-in-fact"), acting collectively and in concert one with the other, in covert preparation for that further predicate act depicted as hereinafter "COUNT FIFTEEN(c)", and with common scheme and purpose, devised, implemented, effectuated, or otherwise participated in, the predicate act of "unlawful imprisonment" of Akers (in violation of K.R.S.

509.020 and, therefore, as well in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner detailed in...¶¶E-31, E-32, E-34, & E-38 with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which "predicate act" ultimately resulted in injuries to Akers in his person, businesses, and property further detailed in...¶¶125 & 127 of Akers' Memorandum;

(c) On, or about, June 28, 1994, in Fayette and/or Jessamine County, Kentucky, the Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of "persons" at the Southland Christian Church of Lexington, Inc., "associated-in-fact"), acting collectively and in concert each with another, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the additional predicate act of "theft by unlawful taking or disposition" of certain property of Akers and Coleman/Akers & Akers, Inc. (C/AA) valued in excess of $300.00 (in violation of K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner as is set forth in...¶E-43 together with FN55 & FN56 thereto, respectively, of Akers' Memorandum; and which said "predicate act" ultimately resulted in injuries to Akers in his businesses and property as are detailed in...¶¶125 & 127 of Akers' Memorandum; &

(d) On or about June 28, 1994, in Fayette County, Kentucky, and Jessamine County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of "persons" at Southland Christian Church of Lexington, Inc., and "associated-in-fact"), acting collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or participated in, the

further predicate act of "tampering with physical evidence" (in violation of Title 18 U.S.C. § 1512 & K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner set forth in...¶E-43 together with corresponding FN55 & FN56, respectively, of Akers' Memorandum; and which "predicate act" ultimately resulted in those injuries to Akers in his person, property, and businesses as detailed in...¶¶125 & 127 of Akers' Memorandum.

COUNT SIXTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, and Vaughan, acting collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or participated in and, thereby, committed those two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in subparagraph (a) hereinafter; used income derived therefrom to acquire and/or maintain interests in and/or participate in conduct of the affairs of the "enterprises" known as "Dr. John J. Vaughan, M. D.", and the "Association-in-fact" (comprised of all those hereinabove "persons" named as "Defendants" herein, both jointly and severally, corporately and individually, and "associated-in-fact") through such a "pattern" of "racketeering activity"; and the "activities" of those said "enterprises" having maintained affects on both "interstate commerce" and "foreign commerce" at all times relevant hereto, all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) Beginning on, or about, June 16, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and Vaughan, proceeding in concert each with the other, with common scheme and purpose, devised, effectuated, implemented, or otherwise participated in, commission

of the predicate acts of "wire fraud" (in violation of Title 18 U.S.C. § 1341) and "mail fraud" (in violation of Title 18 U.S.C. § 1343) in that manner as set forth in...¶¶E-2, E-8, E-28, E-35, E-36, E-41, E-42, E-48, & E-48 together with all corresponding footnotes thereto, respectively, of Memorandum; and which such "predicate acts" resulted in injuries to Akers' businesses and property as detailed in...¶¶125 & 127 of Akers' Memorandum.

COUNT SEVENTEEN - R.I.C.O. VIOLATIONS

In the course thereof hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, and Kelly, collectively and in concert each with the other, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in hereinafter subparagraph (a); in attempt to derive funds therefrom for use in acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known as the "Association-in-fact" (comprised of all hereinabove "persons" named as "Defendants" herein, both jointly and severally, both corporately and individually, and "associated-in-fact") through such a "pattern" of "racketeering activity"; the "activities" of which said "enterprises" having had and maintained affects on "interstate and foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) On, or about, September 23, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and/or Kelly, collectively and in concert each with another, with common scheme and purpose, devised, effectuated, or otherwise participated in the commission of "forgery in the second degree" (in violation of K.R.S. 516.030), and "theft by extortion" (in violation of K.R.S.

514.040), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶¶E-50 together with FN62 of Akers' Memorandum; and which said "predicate acts" resulted in injuries to Akers' businesses and property as detailed in...¶¶125 & 127 Akers' Memorandum.

COUNT EIGHTEEN - R.I.C.O. VIOLATIONS

In the course thereof the hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop & Rushing, acting in concert each with another, with a common scheme and purpose, devised and/or effectuated and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in subparagraph (a) hereinafter, in an overt attempt to use income derived therefrom in the acquisition of, maintaining interests in, and/or otherwise participating in conduct of the affairs of the "enterprise" known only as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, jointly and severally, and "associated-in-fact") through a "pattern" of "racketeering activity"; the "activities" of which said "enterprise" both having and maintaining affects on "interstate commerce" and "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) Beginning on, or about, October 23, 1994, via interstate telephonic communications between Fayette County, Kentucky, and Williamson County, Tennessee, Defendants Bishop and Rushing, acting in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in commission of the two and distinctly separate "predicate acts" of "blackmail" (in violation of Title 18 U.S.C. § 873); and "extortion" (in violation of Title 18 U.S.C. §

875), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶E-56 and FN67 of Akers' Memorandum; and which "predicate acts" resulted in injuries to Akers' businesses and property as detailed in ...¶¶125 & 127 of Akers' Memorandum.

COUNT NINETEEN - R.I.C.O. VIOLATIONS

In the course thereof the hereinabove "COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN through EIGHTEEN', the Defendant Red Corn joined in those "chain conspiracies", "conspiracies', and "overt acts" in the furtherance and concealment thereof, on, or about, November 1, 1995, in Fayette County, Kentucky and/or Jessamine County, Kentucky; and acting both independently and in concert with those other Defendants named herein, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in hereinafter subparagraph (a) through (d); having derived funds therefrom and attempting to derive additional funds therefrom for her use in the acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known herein only as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, both jointly and severally, as herein "associated-in-fact") through such a "pattern" of "racketeering activity"; and the "activities" of which having affects on "interstate and/or foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) On, or about, November 6, 1995, in Fayette County, Kentucky, Defendant Red Corn collaborated with, unlawfully assisted, influenced, and/or directed Defendant Bishop in fraudulent testimony before the Fayette County

[Kentucky] Grand Jury and, therefore, acted in concert with Bishop, with a common scheme and purpose, in effectuating and/or participating in commission of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶¶E-81 & E-82 with FN81 & FN82 thereto, respectively, of Akers' Memorandum; and which "predicate acts" ultimately resulted in injuries to Akers in his businesses and in his as detailed in...¶¶ 125 & 127 of Akers' Memorandum;

(b) In about mid-May, 1995, in Fayette County, Kentucky, via telephonic communications to Pulaski County, Kentucky, the Defendant Red Corn committed the "predicate act" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512), thereby violating provisions of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner as set forth in...¶E-86.I(a) and FN85 thereto of Akers' Memorandum; and which said "predicate act" further resulted in injuries to Akers in his businesses and property as detailed in...¶127 of Akers' Memorandum;

(c) On May 20 through May 22, 1995, in Fayette County, Kentucky, the Defendant Red Corn committed numerous of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in...¶¶E-86.II through E-86.VIII and FN86 thru FN93, respectively, of Akers' Memorandum; and which additional "predicate acts" resulted in further injuries to Akers' businesses and property detailed in...¶127 of Akers'

Memorandum; &

(d) On October 26 through 28, 1998, in Fayette County, Kentucky, the Defendant Red Corn committed numerous of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in the manners set forth in...¶¶E-110.III through E-110.VII, E-110.IX, & E-110.X together with N106 through FN126 thereto, respectively, of Akers' Memorandum; and which such additional "predicate acts" resulted in injuries to Akers' businesses and his property as detailed in...¶127 of Akers' Memorandum.

COUNT TWENTY - R.I.C.O. VIOLATIONS

In the course thereof hereinabove "COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN through EIGHTEEN", the Defendant Overstreet joined in those "chain conspiracies', "conspiracies", and "overt acts" in the furtherance and concealment thereof on, or about, November 10, 1995, in Fayette County and/or Jessamine County, Kentucky, and acting both independently and in concert/consortium with those other Defendants named herein, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity", as are enumerated in hereinafter subparagraphs (a) & (b); and, having derived funds therefrom in covert attempt to derive additional funds therefrom for her use in the acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, both jointly and severally, and herein "associated-in-fact") through such a "pattern" of "racketeering activity"; the "activities" of

which "enterprise" maintaining affects on "interstate commerce" and/or "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

> (a) On May 20 through May 22, 1995, in Fayette County, Kentucky, the Defendant Overstreet committed two or more of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in...¶¶E-86.II through E-86.VIII with FN86 thru FN93, respectively, of Akers' Memorandum; and which additional "predicate acts" resulted in further injuries to Akers' businesses and property as detailed in...¶127 of Akers' Memorandum; &
>
> (b) On October 26 through 28, 1998, in Fayette County, Kentucky, the Defendant Overstreet committed two or more "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in the manners set forth in...¶¶E-110.III thru E-110.VII, E-110.IX, & E-110.X together with FN106 through FN126, respectively, of Akers' Memorandum; and which additional "predicate acts" resulted in further injuries to Akers' businesses and/or property as detailed in...¶127of Akers' Memorandum.

COUNT TWENTY-ONE - R.I.C.O. VIOLATIONS

On, or about, September 2, 1998, in Fayette County, Kentucky, and/or Williamson County, Tennessee, and/or via telephonic communications there

between, Defendants Red Corn, Overstreet, and Williams, acting both independently and in consortium each with another, engaged in an intentional course of conduct directed at Akers, with common scheme and/or purpose, participated in and, thereby, committed two or more of the "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in hereinafter subparagraph (a) through (c); having derived funds therefrom, and attempting to derive additional funds therefrom, for use in the acquisition of and/or maintaining interests in, or otherwise participating in conduct of the affairs of the "enterprises" known as "Ernest W. Williams, Attorney-at-law" and the "Association-in-fact" (comprised of all those hereinabove "persons" named as Defendants herein, both jointly and severally, "associated-in-fact") through a "pattern" of such "racketeering activity"; the "activities" of each of the such "enterprises" having and maintaining affects on "interstate and/or foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and each such "predicate act" depicted as "COUNT TWENTY-ONE(a), (b), & (c)" hereof being violations of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated hereinafter as follows:

(a) "Blackmail" (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 873, *inter alia*, and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in...¶¶E-106 & E-107 and FN106 thereto of Akers' Memorandum ; and which "predicate act" further enhanced injuries to Akers in his businesses and property as detailed in...¶127 of Akers' Memorandum;

(b) "Extortion" (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 875, *inter alia*, and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in...¶¶E-106 & E-107 together with FN106 thereto of Akers' Memorandum; and which "predicate act" further enhanced injuries to

Akers' businesses and property as detailed in...¶127 of Akers' Memorandum; &

(c) "Civil rights intimidation" (in violation of Tennessee Code Annotated 39-17-309 and, therefore, in violation of TITLE 18 U.S.C. §§ 1961 & 1962) in that manner as set forth in...¶¶E-106 & E-107 together with corresponding FN106 of Akers' Memorandum; and which such "predicate act" further enhanced injuries to Akers' businesses and property as detailed in...¶127 of Akers' Memorandum.

COUNT TWENTY-TWO - FINAL OVERT ACTS/ COVER-UP

On, or about, March 30, 2000, in Fayette County, Kentucky, the Defendants Bishop, Fleming, Layne, and Witt continued in those "conspiracies" and "chain conspiracies" as detailed in hereinabove "COUNTS TWO, THREE, & FOUR"; and "overt acts" in the furtherance and concealment thereof as detailed in "COUNTS FIVE, SIX through TEN, & THIRTEEN"; and in the concealment of those "R.I.C.O. Violations" as detailed in hereinabove "COUNTS FIFTEEN through TWENTY-ONE", by conspiring to, participating in, and/or otherwise effectuating schemes to further deprive Akers of privileges and immunities secured by, *inter alia*, Article I-Section 9 [Cl. 2], Article I-Section 10 [Cl. 1], Article IV-Section 2 [Cl. 1], and the First, Fourth, Fifth, Sixth, & Fourteenth Amendments of/to the Constitution of the United States of America and Article 1, Sections 8 & 10 of the Constitution of Tennessee; were joined in that "conspiracy" and "final overt acts" in furtherance thereof by Defendant Goodwine on April 13, 2000, in that manner set forth in...¶E-118 together with FN133 thereto, respectively, of Akers' Memorandum; and which "final overt acts" further enhanced injuries to Akers in his person, property, and businesses as detailed in...¶127 of Akers' Memorandum; all in violation of Title 42 U.S.C. §§ 1983 and 1985(3), *inter alia*.

COUNT TWENTY-THREE - FINAL COVER-UP

On, or about, May 19, 2000, in Fayette County, Kentucky, the Defendants Bishop, Red Corn, and Overstreet, *inter alia*, conspired to covertly "conceal" those "conspiracies" and "chain conspiracies" as detailed in hereinabove "COUNTS ONE, TWO, THREE, & FOUR"; "overt acts" in the furtherance thereof as detailed in "COUNTS FIVE, SIX through TEN, & THIRTEEN"; "unlawful imprisonment" of Akers as detailed in hereinabove "COUNTS ELEVEN & FOURTEEN"; and "R.I.C.O. Violations" detailed in hereinabove "COUNTS FIFTEEN through TWENTY-ONE", in that manner as detailed in...¶¶E-121 through E-124 with FN135 & FN136, respectively, of Akers' Memorandum; and which additional "overt acts" further enhanced the injuries to Akers in his person, property, and businesses as detailed in... ¶126 & 127 of Akers' Memorandum; all in violation of Title 42 U.S.C. §§ 1983 and 1985(3). [D.E. #1, pages 96 - 123]

The underlying "criminal" cases originate from a series of events leading to what, **at its worst**, could be legally construed as nothing more than a misdemeanor "assault under extreme emotional disturbance" [see. e.g., Case No. 5:02cv0162, D.E. #29, ¶ 7(b) & FN7 thereto, i.e., "**Even under Kentucky law (particularly K.R.S. 508.040)**, Akers' so-called act of 'assault' of Bishop was punishable for only **a maximum fine of $250 and/or 90-day sentence in the county jail** [see 'OFFENSE, PENALTY AND BAIL SCHEDULE', APPENDIX A, Kentucky Rules of Court, 1995, West Publishing Company, November 1, 1994] absent unconstitutional ***'ex post facto'* enhancement** under the disguise of implementing, evolutionizing, and/or 'testing the mettle' of Kentucky's newly-enacted/enhanced 'Domestic Violence & Abuse' laws and, **only then, if proceedings had been initiated within the one (1) year statutory period required by K.R.S. 500.050(2).**" [see also, e.g., Akers' "Motion for Reconsideration", as filed in this Court [Case No. 01-o6243] on December 10, 2001, FN8, page 12 thereof]. Moreover, **there can be absolutely no question** that Akers had been - **at least twice**

- **already fully-punished** for the events of May 4th and/or 5th, 1994 [see, e.g., Akers' Memorandum, Exhibit 02-6235-11, Joint Appendix at pages 538-593, ¶¶ E-34 w/FN44 thereto, E-37, E-38 w/FN49 thru FN53 thereto, E-51 w/FN81 thereto, & 81 w/FN76 thru FN82 thereto]. Not even considering the elements of malice, abuse of process, and fraud, ***inter alia***, Akers' convictions for **any charge** related to May 4th/5th, 1994, **was barred** by either the statute of limitations **and/or** the Fifth Amendment to the U.S. Constitution. Akers' conviction "First-Degree Stalking" is **even more easily defeated**, i.e., (1) there were no charges against Akers at the time he migrated back to Tennessee on September 23, 1994 [***id.***, ¶ E-51 w/FN63 thereto]; (2) thereafter, Akers did not voluntarily return **to any jurisdiction within Kentucky** and there is no allegation to the contrary [***id.***, ¶ E-54 w/FN64 & FN65 thereto]; (3) Akers never made **even a single threat of "serious physical injury or death" to Bishop or anyone else** - only "threats" of a civil law suit - **while within the State of Tennessee** [***id.***, ¶¶ E-56 thru E-64 w/FN66 thru FN69 thereto, FN72, & FN75]; (4) Akers' acts were lawful within the State of Tennessee [***id.***, ¶ E-60 w/FN69 thereto]; (5) **Akers acts were not cognizable under Kentucky Law** [see: K.R.S. 500.060 Territorial applicability", ***id.***, page 31, w/FN65 thereto]; & (6) **in essence**, Akers was convicted for violating a "protective order" **with which he had not been served and was not even aware of**, in **blatant violation of the Fourteenth Amendment to the U.S. Constitution** [***id.***, ¶¶ E-65 & E-66 w/FN70 thereto]. **Clearly, there were no actionable "criminal" bases for any manner of "assault" or "stalking"** charges against Akers and therefore, **there could have been no jurisdiction**.

In view of the foregoing, **it is incomprehensible** that the Federal Courts could conclude that can state no claim entitling him to relief under Federal law - **or that the "ends of justice" require Akers to ever return to any jurisdiction in the Commonwealth of Kentucky** - thereby placing himself in peril of **"more of the same" tyranny and oppression** of/by the herein Defendants-Respondents in violation of the Constitution and Laws of the United States.

ARGUMENT(S)

I - THE "ENDS OF JUSTICE" REQUIRE RE-TRANSFER OF VENUE BACK TO UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE DISTRICT-NASHVILLE DIVISION;

II - THE LOWER COURTS ABUSED THEIR DISCRETION BY REFUSING TO "GRANT" AKERS' "DEMAND FOR JUDGEMENT BY DEFAULT" & "MOTION FOR PARTIAL SUMMARY JUDGEMENT";

III - THE LOWER COURTS ERRED BY APPLYING THE *HECK V. HUMPHREY* AND *ROOKER-FELDMAN* DOCTRINES AS GROUNDS FOR DISMISSAL OF THE CASE FOR "FAILURE TO STATE A CLAIM";

IV - THE LOWER COURTS ERRED BY APPLYING VARIOUS IMMUNITIES AS GROUNDS FOR DISMISSAL OF THE ENTIRE CASE;

V - THE LOWER COURTS ERRED BY THEIR APPLICATION OF "COLLATERAL ESTOPPEL"/RES JUDICATA AS GROUNDS FOR DISMISSAL OF THE CASE FOR "FAILURE TO STATE A CLAIM";

VI - THE LOWER COURTS ABUSED THEIR DISCRETION BY REFUSING TO APPLY REQUIRED "STANDARD OF REVIEW WITH RESPECT TO THE DEFENDANTS' "MOTION(S) TO DISMISS";

VII - THE LOWER COURTS ABUSED THEIR DISCRETION IN THE DENIAL OF AKERS' FUNDAMENTAL RIGHTS TO A TRIAL BY JURY AS THE ULTIMATE FINDER OF FACT;

VIII - THE HEREIN CASE SHOULD HAVE, ALTERNATIVELY, BEEN HELD "IN ABEYANCE" PENDING FILING AND DISPOSITION OF AKERS'

PETITION FOR WRIT OF PROHIBITION AND/OR PETITION FOR WRIT OF MANDAMUS WITH THIS HONORABLE COURT, SEEKING TO SET ASIDE HIS CONVICTIONS AS UNCONSTITUTIONAL; &

IX - THE SIXTH CIRCUIT COURT OF APPEALS ABUSED ITS DISCRETION BY REFUSING TO FILE AKERS' "PETITION FOR EN BANC DETERMINATION PURSUANT TO F.R.A.P. 26(a) & (c), F.R.A.P. 40(a)(1), 6 CIR. R. 45(b), AND "DUE PROCESS CLAUSE" OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Each and every one of those above "ARGUMENTS" have been extensively addressed within Akers' previous pleadings and/or briefs within the Federal Courts [see herewith "APPENDIX" at pages 62 through 422 thereof]. They who have eyes to read - **let them read**; those who have the wisdom to comprehend - **let them comprehend**; and **they who have the integrity to do what is just** under the Constitution and Laws of the United States of America - **let them do what is just**.

Moreover, in view of Supreme Court Rule 33(g), **it would be impossible** for Akers to adequately present those arguments within the confines of this "Petition for Writ of Certiorari". In view of Supreme Court Rule 14.4, it would be foolish for Akers to attempt to summarize those arguments. **The simple truth is** that Akers now has no choice but to trust this Honorable Court to now make the **right decision - based upon the facts, laws, and authorities** cited within Akers' herewith "APPENDIX".

The United States Court of Appeals for the Sixth Circuit **has already failed miserably in Its responsibilities**. This Honorable Supreme Court of the United States **must not likewise fail**, inasmuch as to do so will only perpetuate further dismantling of the United States Constitution, thereby rendering the United States of America no more democratic than Nazi Germany, the Cold War era Soviet Union, and many other civilizations which effectuated their own demise.

CONCLUSION

If **any** fair and impartial finder-of-fact, of **any** fair and impartial tribunal, would simply review the facts of the instant case – **objectively** – it could only be concluded that **an American citizen who is both actually and factually innocent of any criminal act** has been: (a) unlawfully arrested and jailed nine times – **in two different states**; (b) unlawfully imprisoned **twice – for a total of forty-six months**; (c) badgered, bullied, harassed, threatened, blackmailed, extorted, and intimidated, ***inter alia***, **for nearly nine years – all within the jurisdiction of the United States Sixth Circuit**. These atrocities were not the product of "error". The English term "error" conjures up the perception of **unintentional** accident, mistake, and/or inadvertence, and the unconstitutional, criminal, and otherwise unlawful acts by the herein defendants **were anything but unintentional**. To the contrary, those acts were blatant, premeditated, and carefully-calculated conspiracies – in arrogant and omnipotent subversion of the Constitution and laws of the United States of America.

From the decisions rendered by the United States District Court for the Eastern District of Kentucky, Lexington Division, and affirmed by the United States Court of Appeals for the Sixth Circuit, one can only reasonably glean that those courts have chosen to be an integral "part of the problem rather than a part of the solution". Quite, frankly, it further appears that the Sixth Circuit Court of Appeals might even be the "root cause" of the problem by virtue of Its recent "rubber stamp" decisions.

Article I - § 1 of the United States Constitution reads as follows:

> "**All legislative Powers herein granted shall be vested in a Congress of the United States**, which shall consist of a Senate and House of Representatives" (emphasis added);

Article I - § 10 of the United States Constitution makes it abundantly clear:

> "**No state** shall enter into any Treaty, Alliance, or

Confederation; ...pass any ***ex post facto*** Law, or Law impairing Obligation of Contracts, or grant any Title of Nobility" (emphasis added);

Article VI of the United States Constitution further admonishes that:

> "**This Constitution and the Laws of the United States which shall be made in the Pursuance thereof**; ...under the Authority of the United States, **shall be the supreme Authority of the land**; and **the Judges of every State shall be bound thereby**, **any Thing in the Constitution or laws of any State to the Contrary notwithstanding**" (emphasis added); &

Article IV - § 2 of the United States Constitution provides that:

> "**The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states.**" (emphasis added).

It is clear that only the United States Congress has the authority to enact, amend, and/or repeal Federal Law - **and only within the parameters established by the United States Constitution**. The Federal Courts have only the authority to implement and enforce those Federal laws - **again, within the parameters established by the United States Constitution**. The various state legislatures have only the authority to enact, amend, and/or repeal laws which have been subrogated under Federal law - **once again, within the parameters established by the United States Constitution**. And the state Courts have only the authority to implement and enforce the laws duly-enacted by their respective state legislatures - **yet again, within the parameters established by the United States Constitution**. **No Federal nor state Court, nor any justice thereof**, has authority to ignore, override, undermine, or sanction violations of, the Constitution and Laws of the United States of America.

The Supreme Court Rules set various criteria warranting Its consideration of a petition for writ of certiorari. The instant case precisely presents those required criteria, i.e., **the systematic dismantling of the Constitution and Laws of the United States Constitution** by the state courts within the Sixth Federal Circuit.

Once again, Akers clearly recognizes that the herein case of "JAMES G. AKERS v. CAROLYN P. BISHOP, ***et al***" is a "hot potato" which no one wishes to deal with. Nonetheless, **that is precisely what the Constitution and Laws of the United States of America require**. That is all Akers is asking the Federal Courts to do in this case – **to enforce the Constitution and Laws of the United States of America** and allow "due process of law" to follow its designed course.

WHEREFORE, the Plaintiff-Petitioner, James G. Akers, asks and prays of this Honorable Court to reverse the "ORDER" dismissing the entire case and remand this action back to United States District Court for the Middle Tennessee District-Nashville Division, with specific instructions that "venue" shall remain therein in order that: (A) Akers may proceed without further hindrance, threat, hardship, and/or undue prejudice in prosecution of his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)"; & (B) the "ends of justice" may be effectively served.

Respectfully submitted,

JAMES G. AKERS, Plaintiff-Petitioner
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024
TELEPHONE: 615/834-2843
FACSIMILE: 615/831-9307

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CERTIFICATION OF COMPLIANCE & AUTHENTICITY

PLAINTIFF-PETITIONER, James G. Akers, **without counsel** in strict accordance with TITLE 28 U.S.C. § 1654, on this 31st day of July, 2002, does hereby certify that the hereinabove documents as bound herewith and indexed above, are copies of the same documents contained within my records with respect to "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in U. S. District Court for the Middle Tennessee District-Nashville Division [Case No. 3:00-1142], U. S. Court of Appeals for the Sixth Circuit [Case No. 01cv6243]; U. S. Supeme Court [Case No. 02-1619], U. S. District Court for the Eastern District of Kentucky [Case No. 5:02cv0162], and U. S. Court of Appeals for the Sixth Circuit [Case No. 02-6235]; (2) that I personally supervised reproduction of the same in strict accordance with U. S. Supreme Court Rule 33.2; & (3) all such "EXHIBITS" are included herein only for that purpose set forth in United States Supreme Court Rule 14.1(f) & (i).

JAMES G. AKERS, Plaintiff-Petitioner
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

No. 02-6235

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
JUN 23, 2003
LEONARD GREEN, Clerk

JAMES G. AKERS,

Plaintiff-Appellant,

v.

CAROLYN P. BISHOP, et al,

Defendants-Appellees.

ORDER

Upon consideration of appellant's motion to reconsider the order of May 29, 2003 rejecting his untimely petition for rehearing in banc for filing and motion to file an amended petition for rehearing en banc,

It is ORDERED that the motions be and they hereby are DENIED.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green (by blh)
Leonard Green, Clerk

[END OF DOCUMENT]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 02-6235

Filed: June 2, 2003

JAMES G. AKERS

Plaintiff-Appellant

v.

CAROLYN P. BISHOP; DORIS FLEMING; ALLEN I. RUSHING; JOHN DOES, Sued as "CBT Does 1-40, known only as that group of persons at Central Bank & Trust Company, Inc., and "associated-in-fact"; TODD M. LAYNE; DONALD RAY SHANNON; JERRY L. KELLY; JOHN DOES, Sued as SCC Does 1-50, known only as a group of persons at) at the Southland Christian Church of Lexington, Inc., and "associated-in-fact"; JOHN VAUGHN, M.D.; THOMAS D. CLARK; KATHERINE H. WITT; JOHN DOES, Sued as FCS Does, known only as a group of persons at the Fayette, Kentucky County Sheriff's Office", associated-in-fact"; PAMELA MILLER; JOHN DOES, sued as LFG Does 1-60, known only as that group of individual persons at the Lexington-Fayette (Kentucky) Urban County Government, "associated-in-fact"; LOU A. RED CORN; JOHN DOES, Sued as CAO Does 1-20, known only as a group of persons at office of Fayette, Kentucky, Circuit Court Clerk ", associated-in-fact"; JOHN DOES, Sued as FCC Does 1-10, known only as group of persons at office of Fayette, Kentucky Circuit Court, "associated-in-fact"; REBECCA M. OVERSTREET; CINDY G. SWARTZ; ERNEST W. WILLIAMS; TODD D. FERGUSON; PAMELA D. GOODWINE; JOHN DOES, Sued as "The Association-in-Fact" (comprised of all above-named "persons", jointly and severally, herein "Associated-in-Fact")

Defendants-Appellees

MANDATE

Pursuant to the court's disposition that was filed 5/2/03 the mandate for this case hereby issues today.

A True Copy

COSTS: NONE

Attest:

s/ L. K. (illegible)
Deputy Clerk

[END OF DOCUMENT]

No. 02-6235

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS,	)	**FILED**
	)	MAY 29, 2003
Plaintiff-Appellant,	)	LEONARD GREEN, Clerk
	)	
v.	)	**ORDER**
	)	
	)	
CAROLYN P. BISHOP, et al,	)	
Defendants-Appellees.	)	
	)	

Upon consideration of the untimely petition for rehearing en banc from appellant,

It is ORDERED that the petition not be accepted for filing.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green (by blh)
Leonard Green, Clerk

[END OF DOCUMENT]

No. 02-6235

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS,

Plaintiff-Appellant,

v.

CAROLYN P. BISHOP; DORIS FLEMING; ALLEN I. RUSHING; JOHN DOES, Sued as "CBT Does 1-40, known only as that group of persons at Central Bank & Trust Company, Inc., and "associated-in-fact"; TODD M. LAYNE; DONALD RAY SHANNON; JERRY L. KELLY; JOHN DOES, Sued as SCC Does 1-50, known only as a group of persons at at the Southland Christian Church of Lexington, Inc., and "associated-in-fact"; JOHN VAUGHN, M.D.; THOMAS D. CLARK; KATHERINE H. WITT; JOHN DOES, Sued as FCS Does, known only as a group of persons at the Fayette, Kentucky County Sheriff's Office", associated-in-fact"; PAMELA MILLER; JOHN DOES, sued as LFG Does 1-60) 60, known only as that

FILED
MAY 2, 2003
LEONARD GREEN, Clerk

ORDER

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific Situations. Please see rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

This notice is to be prominently displayed if this decision is reproduced.

group of individual persons)
at the Lexington-Fayette)
(Kentucky) Urban County)
Government, "associated-in-)
fact"; LOU A. RED CORN;)
JOHN DOES, Sued as CAO)
Does 1-20, known only as a)
group of persons at office of)
Fayette, Kentucky, Circuit)
Court Clerk ", associated-in-)
fact"; JOHN DOES, Sued as)
FCC Does 1-10, known only)
as group of persons at office)
of Fayette, Kentucky Circuit)
Court, "associated-in-fact";)
REBECCA M. OVERSTREET;)
CINDY G. SWARTZ;)
ERNEST W. WILLIAMS;)
TODD D. FERGUSON;)
PAMELA D. GOODWINE;)

No. 02-6235
-2-

JOHN DOES, Sued as "The)
Association-in-Fact")
(comprised of all above-)
named "persons", jointly)
and severally, as herein)
"Associated-in-Fact"),)
)
Defendants-Appellees)

Before: CLAY and GIBBONS, Circuit Judges; CLELAND, District Judge.*

James G. Akers, a Kentucky resident proceeding pro se, appeals the district court order dismissing his action filed pursuant to 42 U.S. C. § § 1983 and 1985, and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § §1951-68. This case has been referred to a panel of the court pursuant to Rule 349(j)(i), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary relief, Akers sued his former wife Carolyn P. Bishop, fifteen named defendants, and six group of "John Does" defendants in a 134-page complaint. The defendants included judges, prosecutors, a mayor, a sheriff, court employees, attorneys, a church counselor, and people who testified as witnesses at various stages of domestic relations and criminal proceedings involving Akers and his former wife. Akers alleged that the defendants conspired to violate his civil rights and caused him to be imprisoned unlawfully and to suffer injuries to person and property. Akers filed his complaint in the United States District Court for the Middle District of Tennessee. The court transferred the case to the Eastern District of Kentucky becasue the events giving rise to the lawsuit took place in and around Lexington, Kentucky. Akers appealed the transfer, and this court dismissed the appeal. The defendants filed motions to dismiss. The district court granted the motions and dismissed the case in its entirety.

---

*The honorable Robert H. Cleland, United States District Judge for the Eastern District of Michigan, sitting by designation.

In his appeal, Akers argues that venue was proper in Tennessee and that the district court erred in each of its rulings on the merits of his case.

Upon review, we affirm the district court's judgement for the reasons stated by the district court. In 1994, Akers' former wife Bishop obtained an emergency protective order (EPO) against Akers and began proceedings to dissolve their marriage. Bishop alleged that Akers struck and threatened her. Akers was arrested for violating the EPO and contempt of court, and he was later charged with assault and stalking. He was convicted of assault and stalking in 1996, but the Kentucky Court of Appeals reversed the convictions and remanded the case for a new trial. Akers was convicted of both charges after the second trial. In May 2000, the appellate court affirmed the stalking conviction but again reversed the assault conviction. Akers pleaded guilty to the offense of assault under extreme emotional disturbance in July 2000. While his criminal appeal was pending in 1999, Akers filed a civil rights action against five of the same defendants in this case, and a habeas corpus petition. The district court dismissed the civil rights action sua sponte for failure to state a claim and denied the habeas petition. Akers did not appeal either decision.

First, we conclude that venue was proper in Kentucky and improper in Tennessee because substantial part of the events giving rise to Akers' claims occurred in Lexington, Kentucky. See 28 U.S.C. § 1391(b).

Second, we agree with the district court that Akers could not seek damages for his criminal convictions through a civil rights of RICO action. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994); *Hermansen v. Chandler*, No. 99-5943, 2000 WL 554058, at *2 (6th Cir. Apr. 28, 2000); *Stepehnson v. Reno*, 28 F. 3d 26, 27-28 (5th Cir. 1994). Although the Kentucky Court of Appeals found error in both of his trials, Akers now stands convicted of the charges he claims were procured through a conspiracy among the defendants. Because these convictions have not been reversed or declared invalid, Akers cannot sue for damages in a civil rights or RICO action.

Third, the district court properly held that Akers had no claim for malicious prosecution. A claim of malicious prosecution is actionable under § 1983 where all elements of the state law tort are present and probable cause was lacking as defined by Fourth amendment jurisprudence. See *Albright v.*

Oliver, 510 U.S. 266, 271-74 (1994); *Coogan v. City of Wixom*, 820 F. 2d 170, 174 (6th Cir. 1987). Under Kentucky law, a plaintiff bringing a malicious prosecution claim must prove, among other things, that the prosecution terminated in his favor. *Broaddus v. Campbell*, 911 S.W..2d 281,283 (Ky. Ct. app. 1995. Akers cannot satisfy this element because a jury convicted him of stalking and he pleaded guilty to assault.

Fourth, the district court also properly held that, to the extent Akers was challenging the results of his state court conviction, the court lacked jurisdiction over his claims. *See district of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.s. 413, 416 (1923). Under the *Rooker-Feldman* doctrine, a federal district court may not hear an appeal of a case already litigated in state court. In order for Akers to prevail this action, he would have had to have shown that the state courts erred by affirming his conviction for stalking and accepting his guilty plea for assault. Because Akers federal claims can only succeed to the extent that the state courts were wrong, his claims are inextricably intertwined with the state court decision. *See Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1,25 (1987) (Marshall, J.., concurring). Accordingly, the district court lacked jurisdiction over Akers' claims. *See Feldmann*, 460 U.S. at 486,; *Rooker*, 263 U.S. at 416. Construing the complaint is a light most favorable to Akers and accepting all of his factual allegations are true, he can prove no set of facts in support of his claims that would entitle him to relief. *See Sistruntk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996). For the foregoing reasons, we affirm the district court's judgement. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

s/ LEONARD GREEN
Clerk

[END OFDOCUMENT]

Eastern District of Kentucky
FILED
SEP 26 2002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

CIVIL ACTION NO. 02-CV-162-JBC

JAMES G. AKERS PLAINTIFF

VS: **JUDGEMENT**

CAROLYN P. BISHOP, ET AL. DEFENDANTS

In accordance with the Memorandum Opinion and Order Dismissing, entered contemporaneously with this Judgement, the court hereby ORDERS AND ADJUDGES:

(1) The motions to Dismiss filed in the Middle District of Tennessee by Defendants Bishops, Williams, Layne, and Shannon, Vaughn, Clark/Overstreet/Goodwine/Red Corn/Swartz/Ferguson, Witt and Sheriff Does, Miller, Fleming, Kelly and Rushing are SUSTAINED.

(2) The following Motions to Dismiss and/or Renewed Motions to Dismiss filed on behalf of various defendants in this court are GRANTED:

(a) The Motion for Judgement on the Pleadings filed by Defendants Clark/Overstreet/Goodwine/Red Corn/Swartz/Ferguson [Record No. 2];

(b) The Renewed Motion to Dismiss filed by Defendant Katherine Witt [Records No. 3];

(c) The Motion to Dismiss filed by Defendant Jerry L. Kelly [Record No 6];

(d) The Renewed Motion to Dismiss filed by Defendants Todd M. Layne and Donald Ray Shannon [Record No. 11];

(e) The Motion to Dismiss filed by Defendant Doris Fleming [Record No. 14];

(f) The renewed Motion to Dismiss filed by Defendant Pamela Miller [Record No. 19];

(g) The Renewed Motion to Dismiss filed by defendants John Vaughn and allen J. Rushing [Record No 20].

(3) The Motions of Plaintiff; (i) to Strike, (ii) for Default Judgement, and (iii) for Summary Judgement [Record Nos. 5,7,12,25,28, and 32] are DENIED.

(4) The Agreed Motion of Defendant Ernest Williams to Substitute Counsel [Record No. 30] is GRANTED.

(5) The motions filed by various defendants for Enlargement of Time and/or to Stay Discovery [Record Nos. 15,20,23,26, and 34] are DENIED AS MOOT.

(6) This action (02-CV-162-JBC) is DISMISSED, with prejudice.

(7) Judgement is entered on behalf of the following named defendants, in their individual and official capacities, where specified by Plaintiff in the Complaint: **Carolyn Bishop**; **Thomas D. Clark**, Fayette Circuit Judge, former Fayette District Judge, **Commonwealth Attorney's Office**, Fayette County, Kentucky; **Central Bank & Trust Co.** (and John Doe Defendants therein); **Fayette County Circuit Court**; **Fayette County, KY Sheriff's Office**; **Todd D. Ferguson**, Assistant Attorney General, State of Kentucky; **Doris Fleming**; **Pamela D. Goodwine**, Fayette County District Judge; **Todd M. Layne**; **Lexington Fayette Urban County Government** (and **John Doe Defendants** therein); **Jerry L. Kelly**, **Pamela Miller**, Mayor of Lexington, KY; **Rebecca Overstreet**, Fayette Circuit Judge; **Lou A. Red Corn**, Assistant Fayette County Commonwealth...

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...Attorney; **Allen Rushing**; **Southland Christian Church** (and **John Doe defendants** therein); **Donald Ray Shannon**; **Cindy G. Swartz**, Appellate Attorney in Attorney General of Kentucky's Office; **John Vaughn, M.D.**; **Ernest W. Williams**; **Katherine Witt**, Sheriff of Fayett County; and the "**Association-**

in-Fact," comprised of all named defendants joint and severally.

(9) This is a FINAL and APPEALABLE order.

This the 25th day of September, 2002.

s/Jennifer B. Coffman
JENNIFER B. COFFMAN, JUDGE

Date of Entry of Service:

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Eastern District of Kentucky
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

CIVIL ACTION NO. 02-CV0162-JBC

JAMES G. AKERS PLAINTIFF

VS: **MEMORANDUM OPINION AND ORDER, DISMISSING**

CAROLYN P. BISHOP, ET AL.

INTRODUCTION

The plaintiff, James G. Akers ("Akers"), filed a complaint, *pro se*, in the Middle District of Tennessee, alleging numerous violations of 42 U.S.C. § 1983, 42 U.S.C. § 1985, and 18 U.S.C.§ 1964, arising from various criminal and domestic relations proceeding initiated against him in the Commonwealth of Kentucky Fayette Circuit and District Courts over and eight-year period form 1994-2000. Akers named twenty-three (23) individual persons and/or entities as defendants.

Numerous defendants filed Motions to Dismiss, or in the alternative, to Transfer Venue to this district because the events of which Akers complains transpired here. Over Akers''s objections, the District Court for the Middle District of Tennessee transferred this proceeding to the Eastern District of Kentucky due to the inadequate contacts with the Middle District of Tennessee. On Appeal of this transfer order, the Sixth Circuit dismissed the case. Akers appealed that dismissal to the United State Supreme Court. On June 24, 2002, the Supreme Court denied Akers' Petition for Writ of Certiorari.

NAMED DEFENDANTS

Akers has named as defendants, the following persons: (1) Carolyn Bishop, Akers' former spouse; (2) Thomas D. Clark, Fayette Circuit Judge, former Fayette District Judge; (3) the Commonwealth Attorney's Office, Fayette County, Kentucky; (4) Central Bank & Trust Co., Lexington, KY, (and John Doe defendants therein), Carolyn Bishop's employer; (5) the Fayette County Circuit Court; (6) the Fayette County, KY Sheriff's Office; (7) Todd D. Ferguson, Assistant Attorney General, State of Kentucky; (8)Doris Fleming, co-worker of Carolyn Bishop/trial witness; (9) Pamela D. Goodwine, Fayette County District Judge; (10) Todd M. Layne, Counselor at Southland Christian Church, Nicholasville, KY; (11) the Lexington Fayette Urban County Government and John Does, defendants therein; (12) Jerry L. Kelly, Carolyn Bishop's divorce attorney; (13) Pamela Miller, Mayor of Lexington, KY; (14) Rebecca Overstreet, /Fayette Circuit Judge; (15) Lou A. Red Corn, Assistant Fayette County Commonwealth Attorney; (16) Allen Rushing, Carolyn Bishop's former boss at Central Bank, (17) Southland Christian Church and John Does defendants therein; (18) Donald Ray Shannon, acquaintance of Carolyn Bishop;; (19) Cindy G. Swartz, Appellate Attorney in Attorney General of Kentucky's Office; (20) John Vaughn, M.D., Carolyn Bishop's physician/trial witness; (21) Ernest W. Williams, one of Akers' criminal defense attorneys from Tennessee; (22) Katherine Witt, Sheriff of Fayette County; and (23) and "Association-in-Fact," comprised of all named defendants jointly and severally.

RELIEF REQUESTED

Akers seeks to recover from all of the defendants, in various groupings, jointly and severally and/or individually and corporately, monetary damages exceeding $14 million; interest; costs; attorneys' fee (if any); and trial by jury.

PRIOR LITIGATION IN THIS COURT

The court takes judicial notice of the typed, fourteen-page complaint Akers filed *pro se* in this court on May 10, 1999, being Civil Action 99-173 ("the 1999 civil rights action"). Akers named as defendants in the 1999 civil rights action several of the defendants he named in the instant proceeding, to wit: Bishop, Overstreet, Swartz, Red Corn, and Clark.[1]

The complaint Akers filed in the instant proceeding arises in substantial part from the same facts and circumstances as the 1999 civil rights action, which Akers filed while confined in the Eastern Kentucky Correction Complex. In the 1999 civil rights action, Akers alleged that he had been maliciously prosecuted in the Fayette District and Circuit Courts and demanded damages in excess of $30,000,000.00 from the defendants. Akers alleged that Clark, Overstreet, Red Corn, and other named defendants therein, all engaged in conspiratorial activities violative of Akers' civil right, resulting in his felony convictions in 1996, and on retrial in 1998 on charges of assaulting and stalking his former spouse, Carolyn Bishop, in May of 1994. The facts span the period between May 1994 and October 1998, and are summarized in this court's May 1999 Memorandum Opinion and Order ("the 1999 Civil Rights Order"), and are adopted and incorporated herein by reference. Pursuant to the 1999 civil Rights Order, this Court dismissed the 1999 civil rights action *sua sponte* on grounds of: (1) prosecutorial immunity with respect to defendants Red Corn and Swartz;[2] (2) Eleventh Amendment immunity with respect to defendant, the Commonwealth of...

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[1] Akers also named Fayette County Attorney Margaret H. Kannensohn and the Commonwealth Of Kentucky as defendants in the 1999 action. Akers did not name either as defendants in the instant proceeding.

[2] Akers named Cindy Swartz as a defendant in the 1999 action because she had filed a brief on behalf of the Kentucky Attorney General with respect to the appeal Akers filed when he was convicted for assault and stalking the first time, 1996, in Fayette Circuit Court.

...Kentucky; (3) judicial immunity with respect to defendants Clark and Overstreet; and (4) failure to state a § 1983 claim against defendants Bishop. Akers did not appeal the 1999 Civil Rights Order.

Akers's marital discord between 1994 and 1998, and resultant assault and stalking convictions, set forth in the 1999 civil rights action, are the *same* facts and circumstances Akers alleges in the instant complaint, *except* that in the instant action Akers has: (1) informed the court of developments in his criminal and appellate proceedings subsequent to May, 1999; (2) alleged additional and different federal statutory violations of his constitutional rights under 42 U.S.C. § 1985 and RICO; and (3) named additional defendants.

1999 HABEAS CORPUS PETITION

On June 28, 1999, five weeks after this court dismissed the 1999 civil rights action, Akers filed a petition in this court for habeas corpus relief pursuant to 28 U.S.C.§ 2241 and 28 U.S.C.§ 2254, which was docketed as Civil Case No 99-CV-242 and was styled as "James Gorden Akers v. George Million, Warden Eastern Kentucky corrections Complex et al" ("the 1999 habeas corpus action"). The petition again reiterated all of the events concerning Akers' and Bishops marital discord and Akers' subsequent criminal prosecutions in the Fayette District and Circuit Courts between May, 1994 and June, 1999. Akers sought an order from this court releasing him from the state custody on bond during the pendency of his appeal of the 1998 assault and stalking convictions, which appeal was then pending in the Kentucky Court of Appeals.[3] On February 2, 2000, this court entered a judgement dismissing Akers' habeas corpus petition. Akers did not appeal this court's dismissal of the 1999 habeas corpus proceeding.

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[3] The Fayette Circuit Court had denied Akers' request for release on bond pending appeal, as had the Kentucky Court of Appeals by order entered March 8, 1999.

FACTUAL ALLEGATIONS OF INSTANT COMPLAINT

Akers' submission in the instant case consist of: (1) a one hundred-thirty-four (134) page complaint filed in the Middle district of Tennessee; (2) a "Memorandum & Memorandum of Law," one hundred seventy-eight (178) pages in length; and (3) a two-volume document entitled "Appendix/Relevant Exhibits," which volumes are six hundred thirty-eight (638) pages in the aggregate.

The following is a brief summary and/or construction of Akers allegations in the instant complaint and accompanying material, without constituting a full reiteration of the facts contained in the 1999 Civil Rights Order.

After a series of domestic arguments and altercations between Akers and Bishop, while married in 1994, Bishop obtained Emergency Protective Orders in the Fayette District Court against Akers. Bishop perceived that Akers was intentionally disregarding the terms of the EPO because of constant phone calls and threats of physical harm she was receiving from Akers'. Akers was held in contempt of court for violating the EPO and was eventually indicted in 1995 in the Fayette Circuit Court on charges of assault and stalking. Akers was extradited from Tennessee to stand trial on the assault and stalking charges in Kentucky. Akers was denied bail by Defendant Rebecca Overstreet, who was the presiding Fayette Circuit Court Judge on the assault and stalking charges.

Akers alleges that in 1996, he was convicted in the Fayette Circuit Court (Judge Rebecca Overstreet presiding) for the assault and stalking of Defendant Carolyn Bishop. Akers appealed his conviction to the Kentucky Court of Appeals which, in 1998, reversed his conviction and remanded the charges for retrial, citing error by Overstreet. Akers was tried in October, 1998, on the same charges and again convicted of both counts, although the jury recommended a slightly more lenient sentence on remand. Akers again appealed the 1998 conviction to the Kentucky Court of Appeals.

In May 1999, Akers filed the 1999 civil rights action in this court, which this court dismissed as discussed *supra*. On May 19, 2000, the Kentucky Court of Appeals entered and order affirming the 1998 stalking conviction, but again ruled theat continued evidentiary errors Overstreet committed after the case had been remanded to her in 1998 justified yet a second reversal of the assault conviction. On July 7, 2000, Akers pled guilty to "Assault under extreme emotional disturbance" in the Fayette Circuit Court.

The instant complaint, as noted, refers to all of the Akers/Bishop marital problems, domestic violence episode, and criminal proceedings which ensued between May 1994 and November 1998, all of which had already been provided to the court in the 1999 civil right action. The court notes that the first 89 pages of the 94 pages of facts in the instant complaint reiterate the facts contained in Akers' complaint in the 1999 civil rights action and in the 1999 habeas corpus petition. Not until page 89 does Akers allege *new facts* not contained in the two preceding actions. Akers expanded the number of defendants in the instant complaint and asserted additional theories of wrongdoing on the part of the defendants in the instant complaint ans asserted additional theories of wrongdoing on the part of the defendants he had named in the 1999 civil rights action. However, in the instant submission, Akers elaborates in greater detail on every event between 1994 and 1998.[4]

Akers contends he was maliciously prosecuted and unlawfully imprisoned for assaulting and stalking his former spouse, and that he was the victim of conspiracies against him, comprised of...

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[4] Akers discusses in detail the May4-5, 1994 physical altercations between Bishop and Akers; Akers; unhappiness over the role he perceived that Southland Christian Church ("SCC") played in the break-up of his marriage; Akers' appearance in the Fayette District Court on domestic violence charges; issuance of Emergency protective order against Akers; the discussion of phone calls to Bishop's then-place of employment (Central Bank & Trust Co.); Akers assertion that Defendants Allen Rushing and Doris Fleming at Central Bank were conspiring with Bishop to effect Akers' imprisonment; that counselors at SCC were conspiring with Bishop to

imprison Akers and deprive him of constitutional rights; his 1995 extradition from Tennessee; his 1995 indictment in Fayette Circuit Court,; his 1996 conviction for assault and stalking; the Kentucky Court of Appeal's 1998 reversal and remand of his 1996§ conviction; his retrial in Fayette Circuit Court in 1998 and resultant conviction in late 1998 on the same charges. Akers has submitted to the court a 638 page Appendix containing apparently every document pertaining to the Fayette District Court EPO/Domestic Violence proceeding and his Fayette Circuit Court felony prosecutions.

Included in the 638-page, two-volume Appendix are trial exhibits, interlocutory orders, pre-trial motions and responses thereto, motions and rulings relative to bond and bail requests, invoices for legal services from Akers' attorneys, correspondence of various nature, newspaper articles critical to Overstreet, and test results. Akers 134-page complaint itself contains, in numerous places, pages and pages of excerpts of testimony from his Fayette District and Circuit Court proceeding and verbatim discussions he alleged occurred between different defendants and Akers.

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various groupings of the named defendants, Akers named as a defendant herein almost anyone he perceived as having any connections to his convictions, except the jurors.

SUMMARY OF CLAIMS

The thrust of Akers''s allegations concerning the deprivation of his civil rights under § 1985 and RICO patterns of racketeering activity is directed at defendants Bishop, Red Corn, and Overstreet and is apparently premised upon the fact on May 19, 2000, the Kentucky Court of Appeals reversed his 1998 assault conviction (for the second time) and remanded the proceedings. The Kentucky Court of Appeals affirmed the stalking conviction in this opinion. Akers describes almost every ruling Overstreet issued during his 1996 trial and his 1998 retrial as being either fraudulent and/or constituting intentional jury tampering. He alleges that Re Corn and Overstreet acted as co-conspirators with respect to all pretrial and trial evidentiary rulings which Overstreet entered against him, and with respect to all testimony and/or evidence Overstreet admitted at both trials, Akers alleges that all of the named defendants who testified against him at either or both trials (in 1996 and 1998), respectively) acted as conspirators to violate his civil rights.

With respect to Overstreet, Akers' complaint alleges numerous instances of trial court error by Overstreet during and subsequent to his retrial in 1998. Akers alleges Overstreet stated on the record, during a pre-trial proceeding, that she had not read the [February 27, 1998] court of Appeals opinion [reversing and remanding his 1996 convictions] and that, accordingly, Overstreet repeated the same evidentiary errors which she committed in 1996. Akers alleges that in another pre-trial proceeding, after this case was remanded in 1998, Overstreet denied him the right to *pro se* representation and the "right to be heard", referring to a comment Overstreet made on the record consisting of "Besides, I think I already know how the jury is going to rule in this case."

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Akers alleges that Overstreet committed additional errors and rendered numerous improper and unfair rulings during his October, 1998 retrial. All of these are set forth with particularity on pp. 73-88 of Akers' complaint. These allegations are basically more detailed versions of the facts Akers alleged previously in the 1999 Civil Rights Action.

Akers further alleged that the attorneys employed by the Attorney General of Kentucky participated in "chain like function" in the furtherance of conspiracies initiated by Bishop, Vaughn, Red Corn, and Overstreet (and other named defendants) by filing briefs on behalf of the Commonwealth of Kentucky when Akers appealed his assault convictions in 1996 and 1998.

Akers contends that Overstreet and Red Corn (primarily), and the other named defendants (secondarily) conspired to and did not violate his civil rights in violation of § 1983 and § 1985(3), relying heavily on the Kentucky Court of Appeal's May 19, 2000 "Opinion Affirming in Part, Reversing in Part."[5] Akers provided only excerpts of this opinion to this court and incorporated the excerpts into his complaint at page 92. Akers stated that the Court of appeal criticized Overstreet for failing to read, much less follow, [the Court of Appeals]

instruction on remand; failed to exclude evidence of certain bad acts [of Akers']; erred in introducing evidence of Akers' stalking of Bishop while being tried for assault; failed to properly analyze bad acts evidence of Bell [v. Commonwealth, 875 S. W.. 2d at 889, 890]; and failed to conduct separate trials on stalking and assault during the October, 1998 retrial. The Kentucky Court of Appeals concluded these errors justified reversing Akers' 1998 assault conviction, but it affirmed the stalking conviction.

Akers states that he pled guilty on July 7, 2000 to Assault under Extreme Emotional Disturbance, a Class D. Felony,' under threat of the "tyranny and oppression of Red Corn and

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[5] Akers did not provided to this court a full and complete copy of this May 19, 2000 opinion. Akers inserted the "Appendix" and labeled as :"Exhibit DDDD," what appears to be pages 1,15,16, and 20-23 of the May 19, 2000 Kentucky Court of Appeals Opinion.

Overstreet for and astounding third time around...as apparently, the only means of escaping the 'oppression' of Bishop, Red Corn, Overstreet, et al." Akers further alleges as far as this court can construe from page 94 of his complaint, that he was imprisoned 1,094 days longer that her could have "lawfully" been imprisoned as a result of any alleged "criminal conduct."[6]

Akers alleges numerous injuries as a result of various violations of his civil rights, and RICO provision, by all of the named defendants herein, including but not limited to:(1) serious physical injury and threats thereof (and death); (2) life-threatening and permanently debilitating disease; (3) extortion and/or blackmail; (4) irreparable injury to his personal business and reputation and career; (5) diminished quality of life; (6) loss of income to business; (7) 40% permanent loss to his hearing; and (8) business losses to his companies; (a) "Coleman, Akers & Akers" in the amount of $860,000.00, and (b) "Cadre and/or "Akers & Akers of Tennessee, inc." in the amount of $3,272,000.00.

Alleged Conspiracies

Akers alleges the existence of fourteen (14) different conspiracies devised against him, in violations of 42 U.S.C. § § 1983 and 1985(2) and (3). These conspiracies are comprised of a mixture of different named defendants alleged to have participated in multiple conspiracies.

Akers alleges the existence of nine (9) separate RICO violations committed by various groupings of named defendants, specifying in detail particular "predicate acts" by the defendants with respect to each alleged RICO violation. Akers alleges, among other things, that the specified defendants formed enterprises engaged in numerous "patterns of racketeering activity." which activities had and maintained effects on "interstate and foreign commerce" in violation of 18 U.S.C.

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[6] Akers alleges on page 94 of his complaint that he was imprisoned a total 1,335 days as a result of the criminal proceeding discussed in his complaint.

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§ § 1961 and 1962. As examples of "predicate acts", Akers alleges that various of the named defendants were responsible for: (1) kidnapping; (2) unlawful imprisonment; (3) theft by unlawful taking or disposition; (4) tampering with physical evidence; (5) wire fraud; (6) mail fraud; (7) forgery in the second degree; (8) theft by extortion; (9) blackmail; (10) extortion; (11) tampering with a witness; (12) influencing [a] juror generally;; and (13) civil rights intimidation.

Akers alleged that Bishop participated in approximately six of the nine RICO conspiracies, and that Red Corn committed overt action in furtherance of numerous conspiracies in violation of RICO provisions by engaging in two or more predicate acts of tampering with a witness and influencing a juror. Akers mirrors these allegations with respect to Overstreet. Akers alleged in a footnote that the only means by which an attorney in Central Kentucky's legal community can "receive fair

treatment" and avoid being "victimized" in Overstreet's court is to secure Overstreet's recusal by hiring her spouse to represent them, further asserting that Overstreet capitalizes on attorneys recusing her for the "express extortionate purpose of...building the practice of her husband..."

Akers further alleged that Dr. John Vaughn, along with other defendants, was part of a conspiracy designed to prosecute and imprison Akers.[7] Dr. Vaughn was the doctor from whom Carolyn Bishop received medical treatment following the May 4-5, 1994 altercation with Akers, which episode initiated the domestic violence charges resulting in eights years of legal proceedings.

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[7] Akers alleges that Dr. Vaughn was involved in a RICO pattern of racketeering and was engaged in a pattern designed to deprive Akers of his civil rights by reason of billing Carolyn Bishop's insurance company after examining and rendering medical services to Carolyn Bishop. Dr. Vaughn also testified against Akers in Akers' 1998 retrial. He also alleges his own attorney, defendant Williams, and Bishop's divorce attorney, Defendant Kelly, were engaged in prohibited RICO patterns of racketeering in the course of performing isolated legal services on behalf of their respective clients

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MOTION TO DISMISS FILED BY DEFENDANTS

Pending before this court are numerous motions to dismiss filed on behalf of sixteen (16) different defendants.[8] It is clear ffrom the factual and legal analysis of the Middle District of Tennessee's September 18, 2001, Memorandum in support of its Order Transferring Venue that *this* court was the appropriate court to address the merits of defendants' motions to dismiss. Once the Middle District of Tennessee determined that transfer to this district was appropriate, it had not jurisdiction to entertain or address the merits of the defendants' motions to dismiss.

> When a motion for transfer under 28 U.S.C.A. § 1404(a) has been granted, and the papers lodged with the clerk of the transferee court, the transferor court-and the appellate court that has jurisdiction over it-lose all jurisdiction over the case and may not proceed further with regard to it.

Wright, Miller & Cooper, Federal Practice and Procedure: § 3846 (2d ed. 1986).

Thus, the defendants' original motions to dismiss, as well as the renewed motions to dismiss are properly before this court.

Some defendants have filed additional motions requesting stays of discovery and/or enlargement of time in which to file and answer to Akers' complaint, until thirty days after the court addresses the merits of the various motions to dismiss. The judges and prosecutors have filed a supplemental Motion to Dismiss Akers' complaints alleging, among other things, that it fails to comply with Fed. R. Civ. P8's requirement of a "short and plain" statement of the jurisdictional grounds, the basis for relief, and demand sought. The Court agrees that Akers' *pro se* complaint completely violates the spirit of Fed. R. Civ. P. 8, which requires a short and plain statement giving a defendant notice of the claim against him. Akers complaint contains a dissertation of his thoughts...

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[8] As discussed *infra*, after transfer of this proceeding to the Eastern District of Kentucky, some of the defendants herein either renewed their motions to dismiss filed in the Middle District of Tennessee or filed anew a "Motion for Judgement on the Pleading," reiterating defenses asserted previously in Tennessee.

...and opinions. Defendant Ernest Williams has requested a status conference. All of these additional motions are rendered

moot by reason of the court's opinion, *infra*, dismissing Akers's complaint.

DISCUSSION

Standard of Review

Pro Se pleadings are held to less stringent standards than those drafted by attorneys. See Cruz v. Beto, 405 U.S. 319 (1972); Haines v. Kerner, 404 U.S. 519 (1972). The allegations in a *pro se* complaint must be taken as true and construed in favor of the plaintiff. Malone v. Colyer, 710 F. 2d 258, 260 (6th Cir. 1983). Even taking all of Akers' allegations as true, as dictated by Malone v. Colyer, this court finds that based upon the numerous defenses and legal doctrines asserted by the defendants, Akers' complaint and accompanying material are frivolous and fail to state a claim upon which relief can be granted.

Fed. R.Civ.P. 12(b) provides for the dismissal of claims and parties for seven listed reasons. A motions to dismiss under Fed. R.Civ.P. 12(b)(6) for failure to state a claim " should not be granted unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Well-pled allegations must be taken as true and must be construed most favorably toward the non-movant. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). A complaint should be dismissed pursuant to Fed.R.Civ.P.12 (b)(6) only if there is no law to support the claims, if the alleged facts are sufficient to stat a claim, or if on the face of the complaint there is an insurmountable bar to relief. See Rauch v. Day & Night Mfg. Corp., 576 F. 2d 697 (6th Cir. 1978); Westlake v. Lucas, 537 F.2d 857 (6th Cir. 1976). The court finds that Akers' claims are insufficient to state a claim on which relief can be granted and this his complaint should be dismissed with prejudice. The court will address the...

various grounds upon which it concludes Akers' complaint is frivolous and deficient as a matter of law.

I.

DISMISSAL UNDER *HECK V. HUMPHREY*

Reduced to its core, Akers complaint alleges first that nineteen of the named defendants conspired, in various assortments; (1) to deprive Akers of his constitutional rights guaranteed under the Fourth, Fifth, and Fifteenth Amendments of the United States Constitution; (2) to deprive him of his property; (3) to unlawfully imprison him for 1094 days; and (4) to act in concert with each other in a pattern of racketeering activity in violation of RICO statutes.

Akers' complaint against these defendants involved in his state court judicial proceedings is an unambiguous attempt to collaterally attack his two state court criminal convictions and what he describes as "unlawful imprisonment." These state court convictions consists of (1) a 1998 jury conviction for stalking, affirmed on appeal in May, 2000, and (2) a guilty plea Akers entered in July, 2000, to "Assault under Extreme Emotional Disturbance. These conviction have not been reversed or otherwise invalidated, and Akers does not so allege. However, Akers is seeking $14 million in damages from the named defendants on the basis of unlawful imprisonment stemming from two state court convictions he alleges were obtained by fraud, jury tampering, extortion, blackmail, and other specified illegal means.

Heck v. Humphrey, 512 U.s. 477, 114 114 S. Ct. 2364 (1994), operates as a complete bar to Akers' claim. Heck v. Humphrey precludes the recovery of damages under § 1983 for an allegedly unconstitutional conviction or imprisonment, or for the other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, where the plaintiff is unable to prove that the underlying conviction or sentence has been: (1) reversed on direct appeal; (2) expunged by...

...executive order; (3) declared invalid by a state tribunal authorized to make such determination; or (4) called into question by a federal court's issuance of a writ of habeas corpus. Id., 512 U.S. 477 486-87. Neither Akers' 1998 stalking conviction, affirmed on appeal in May, 2000, nor his assault conviction obtained by a guilty plea in July, 2000 has been reversed, expunged or declared invalid by any authorized tribunal. The 1999 habeas corpus action was dismissed. "A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not recognizable under § 1983." Id. 512 U.S. at 487. Thus, the principles enunciated in Heck v. Humphrey bar Akers' § 1983, § 1985, and RICO claims against all the named defendants.

Clearly, if Akers were to prevail on any one or all of his civil rights and/or RICO claims against any one or all of the defendants named herein, an anomalous situation would exist whereby Akers could conceivably be recovering damages for actions associated with and resulting from allegedly unconstitutional convictions and imprisonment, while Akers' two state court criminal convictions would contemporaneously remain intact, valid and undisturbed. This is precisely the type of inconsistent result which the United States Supreme Court ruled was prohibited in Heck. It is obvious from the attachments to Akers' 134-page complaint and 160-page memorandum of law that Akers views his complaint as a vehicle by which to relitigate, in full, every aspect of his two convictions and the prison terms he served as a result of his convictions.

The Sixth Circuit Court of Appeals systematically applies the principles enunciated in Heck to not only civil rights plaintiffs whose criminal sentences have not been otherwise reversed or expunged, but also to would-be litigants alleging RICO violations by persons involved in their criminal convictions in state court. See Hermanasen v. Chandler, 211 F. 3d 1269, 2000 WL 554058 (6th Cir. (Ky.)), cert. denied, 531 U.S. 997 (2000) (applying Heck v. Humphrey principle to civil actions under RICO and holding that a federal court should not address RICO claims which...

...necessarily impugn the validity of a state conviction unless the plaintiff has already invalidated the conviction on direct appeal or in a collateral proceeding under 28 U.S.C. § 2254 or § 2255). Hermansen v. Chandler dictates that Akers' RICO claims cannot be maintained where his convictions have not been reversed.

II.

"FAVORABLE TERMINATION" OF A PRIOR CRIMINAL PROCEEDING IS A PREREQUISITE OF A § 1983 MALICIOUS PROSECUTION CLAIM

Akers' lists improper and illegal conduct by defendants which he alleges resulted in his imprisonment. The most significant allegations in Akers' complaint are:

3 ...[t]he Plaintiff Akers was: ...(b)unlawfully imprisoned in May and July, 1994 ...(f) fraudulently and maliciously accused, prosecuted and then imprisoned...from May 22, 1996 until April 15, 1998...

4 ...Akers' was: [from October 28, 1998 until July, 2000] (d) yet again oppressively and unlawfully prosecuted, convicted, and then imprisoned for the very same unconstitutional and fraudulent felony charges...as was the case in May of 1996.

Thus, Akers has labeled his essential claim as 'malicious prosecution' which, he alleges, in turn resulted in his unlawful imprisonment. A plaintiff alleging malicious prosecution and an analogous § 1983 claim must demonstrate that the previous prosecution, alleged to have been malicious, was terminated in favor of the plaintiff. Dunn v. Tennessee, 697 F.2d 121, 126 (6th Cir. 1982), cert. denied, 460 U.S. 1086 (1983) ("...this Court finds that favorable terminations of the prior criminal proceeding marks the point at which a 1983 claim for malicious prosecution accrues."); Singleton v. City of New York, 632 F. 2d 185, 194-195 (2d Cir. 1980), cert denied, 450 U.S. 920 (1981) (plaintiff's claim of deprivation of 1983 civil rights malicious prosecution may not

be stated without alleging and proving that the prosecution terminated in some manner, indicating that plaintiff was not guilty of the offenses charged).

This court, in Cissell v. Hanover Ins., Co., 647 F. Supp. 757, 758 (E.D. Ky. 1986), similarly addressed and defined the parameters of maintainable federal § 1983 claims, expressly relying on Singleton v. City of New York, *supra*, stating as follows:

> It is well established that a prerequisite for recovery in both a common law malicious prosecution action and a federal § 1983 claim analogous to such action is proof that the previous prosecution alleged to be malicious was terminated in favor of the present plaintiff. *Singleton v. City of New York . . .Lendes v. Sutter*, 621 F. Supp. 1197 (D.N.J. 1985).

The Cissell opinion examined the six basic elements required under Kentucky Law for a mailicious prosecution action, the third of which is "the terminations of such proceeding [either civil, criminal or administrative] in [the original] defendant's favor," citing Raine v. Drasin, 621 S.W. 2d 895, 899, (Ky 1981). According to Singleton, *supra*, "p]roceedings are 'terminated in favor of the accused' only when their final disposition is such as to indicate that the accused is not guilty."Id. at 193. 9 See also MacFawn v. Kresler, 666 N.E. 2d 1359 (N.Y. 1996).

Akers bases the instant § 1983, § 1985, and RICO conspiracy complaint on the fact that the Kentucky Court of Appeals reversed his assault and stalking conviction in 1998, and in March, 2000, reversed his subsequent 1998 assault conviction. However, Akers' criminal prosecution on the stalking charge " terminated" on or about June 19, 2000, thirty days after the Court of Appeals rendered its May 19, 2000 opinion affirming the 1998 stalking conviction. Akers filed no further...

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9. There is some case law which imposes a slightly less stringent requirement for establishing "termination in favor of the accused"; Smith-Hunter v. Harvey, 734 N.E. 2d 750 (N.Y. 2000), held that a dismissal of a criminal charge on statutory speedy trial grounds based upon prosecutor's inaction, constituted a "favorable termination." *Cf* Martin v. Adler, 515 N.Y. S. 2d 400, 405 (N.Y. sup Ct 1987) (dismissal for failure to prosecute was not adjudicated on the merits; thus, malicious prosecution claim was barred). The Smith-Hunter v. Harvey opinion noted, however, that is a criminal charge is dismissed out of mercy requested or *accepted by the accused* , there is no "favorable termination." Id. at 753 (emphasis added). In the instant case, it is undisputed that Akers pled guilty to Assault under Extreme Emotional Disturbance, a Class D. Felony, on July 7, 2000.

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appeals after the stalking conviction was affirmed. Akers' criminal prosecution on the assault charge "terminated" on July 7, 2000, when he pled guilty to assault under extreme emotional disturbance. These proceedings did not terminate when the Kentucky Court of Appeals reversed Overstreet, in 1998 and 2000 and remanded the proceedings. They terminated at the conclusion of the stalking appeal (thirty days after May 19, 2000) and when Akers pled guilty to assault under extreme emotional disturbance in July, 2000. Obviously, neither proceeding terminated in Akers' favor.

The 1998 and 2000 Orders and Opinions of the Kentucky Court of Appeals, reversing Akers' convictions and remanding for retrial, did not, on their own, operate as a bases on which Akers can premise his various civil rights and RICO claims. In Smith v. Holtz, 87 F. 3d 108 (3rd Cir. 1996), cert. denied, 519 U.S. 1041, 117 S. Ct 611, 136 L. Ed.2d 536 (1996), Smith sought monetary compensation for his allegedly unconstitutional conviction and imprisonment on murder charges. On direct appeal the Supreme Court of Pennsylvania reversed Smith's conviction on evidentiary grounds and, as in the instant case, remanded for a new trial. Before trial, however, all charges against Smith were dismissed on the basis of newly discovered prosecutorial misconduct. Smith sued for damages under § 1983 after the murder charges against him were dismissed. The

defendants moved to dismiss his complaint on stature-of-limitations grounds, arguing that Smith's claim was time-barred because it accrued when his conviction was reversed by the state's highest court, even though Smith was still at the time of the reversal, subject to ongoing criminal prosecution Akers similarly asserts in the instant action that the two reversals and remand by the Kentucky Court of Appeals triggered his malicious prosecution claim against the defendants.

The Third Circuit concluded that Smith's § 1983 complaint was timely because it was filed within the requisite 2 years from the date the criminal charges against him were dismissed. The...

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...Third Circuit ruled that the dismissal of the charges, not the earlier reversal and remand on direct appeal, commenced the running of the limitations period. The court reasoned that the reversal and remand of Smith's conviction created a potential for a judgement against Smith in the pending criminal prosecution, which potential would have precluded Smith's bringing a § 1983 claim against the defendants under the Heck v. Humphrey doctrine. The Third Circuit stated:

> ...[w]e must decide whether , under the teaching of *Heck[v. Humphrey]* a claim is cognizable under § 1983 where its success would necessarily imply the validity of a *future conviction that might be entered on a pending criminal charge.* We hold that such a claim is not cognizable under § 1983....
>
> ....
>
> ...[s]uch a claim does not accrue so long *as the potential for a judgement in a criminal prosecution continues to exist.*

Smith v. Holtz, 87. F 3d at 110, 113 (Emphasis added). The third Circuit ruled that the potential for Smith's conviction was not extinguished until the criminal charges against him were finally dismissed.

Applying the Smith v. Holtz rationale to the instant proceeding, the 1998 reversal and remand by the Kentucky Court of Appeals created the potential of a judgement against Akers on both charges because both charges were remanded for retrial, which created the prospect or possibility of Akers being convicted, on retrial, of either or both charges. In fact, on retrial, Akers was convicted again on both charges; the stalking charge was affirmed by the Kentucky Court of Appeals in May, 2000, and the assault charge was again remanded for retrial. Akers pled guilty to assault under emotional disturbance in July, 2000. Thus, after each reversal and remand, the potential for Akers' conviction (on both charges) became reality. Pursuant to Heck v. Humphrey and Smith v. Holtz, Akers could not have maintained a § 1983 action against any of the named defendants immediately after the Kentucky Court of Appeals reveresed and remanded, in either 1998 or 2000, ...

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...because of the existence of the potential of his conviction on retrial in the pending criminal prosecutions. Akers has since been convicted of stalking and has since pled guilty to assault under extreme emotional disturbance. Consequently, all of his civil rights claims against these defendants are now completely barred by the Heck v. Humphrey doctrine.

This court finds persuasive the following authorities discussing the requirement of a final disposition and/or termination of underlying criminal charges with regard to the initiation of a malicious prosecution claim under § 1983: Ruff v. Runyon, , 258 F. 3d 389 (6th Cir. 2001) (Bivens claim for malicious prosecution did not accrue until criminal charges were dismissed); Shamaeizadeh v. Cunigan, 182 F. 3d391(6th Cir 1999)(same); Harvey v. Waldron, 210 F.3d 1008 (9th Cir. 2000) (stating that Heck applies to both actual and potential conviction in the context of accrual of action); Covington v. City of New York, 171 F.3d 117, 124 (2d Cir. 1999) (§ 1985 claim would not accrue for statute of limitations purposes until criminal charge

was actually dismissed); Uboh v. Reno, 141 F3d 1000 (11th Cir. 1998) (holding the Bivens claim accrued after dismissal of criminal charges); Burt v. Smith, 181 N.Y. 1,5 (N.Y. 1905) (favorable terminations is a prosecution that :finally ends in failure").

III.

EFFECT OF JULY, 2000 GUILTY PLEA ON "FAVORABLE TERMINATION" REQUIRMENT

Akers attributes his July 7, 2000 guilty plea to the fear of being tried a third time by Red Corn in Overstreet's court. Akers' guilty plea, however, prevents him form collaterally attacking same in a subsequent civil suit.[10] In Duerr v. Kentucky & Indiana Bridge & R. Co., Ky., 116 S.W. ...

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[10] Akers submitted as Exhibit "EEEE" in Volume II of his Appendix [page 634] a copy of the "Judgement on the Guilty Plea," which was entered of record in the Fayette Circuit Court on July 10, 2000. Notwithstanding his assertion that this plea was coerced, this court document clearly confirms Akers' plea to "Assault under Extreme Emotional Disturbance" was knowing and voluntary. The judgement states as follows:

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325 (1909), Duerr filed an action for malicious prosecution against the complaining witness after Duerr had pled guilty to a reduced felony charge. Much like akers, Duerr alleged: (1) that the complaining witness gave perjured testimony against him; (2) that there was a conspiracy among a group of individual to deprive him of his liberty; and (3) that the only way to avoid a felony charge was to plead to a lesser offense under duress and intimidation. In dismissing his malicious prosecution claim, the highest court in Kentucky opined as follows:

> But the appellant completely closed the door of the courts to his petition for redress when he admitted that he had pleaded guilty to a charge that was made unjustly, as he avers, against him. A person who comes into open court and admits on the record that he is guilty of the offense for which he is being prosecuted will not afterwards be heard to say that the prosecution against him was procured by fraudulent methods. He will not be allowed to admit in one court that he was guilty, and in another to plead his innocence. His public admission of guilt in the criminal court was a complete and unanswerable refutation of the charge that the prosecution against him was unfounded.

Duerr at 326. See also Pennington v. Dollar Tree Stores, 28 Fed. Appx. 482, 2002 WL 169547 (6th Cir. (Ky)) (arrestee's stipulation that there was probable cause for her arrest and shoplifting charge was not a termination of proceeding in her favor, as required to support her malicious prosecution claim against store and security firm). In the instant case, Akers stipulated and agreed that there was probable cause for the charge to be prosecuted.

"Normally a conviction alone is sufficient to establish probable cause of a prosecution." Dunn v. Tennessee, 697 F.2d at 127. akers stands convicted of two felonies, to one of which he entered a plea of guilty. See also Hendrix v. Cox & Associates, 1997 WL 710914, *4 (Tenn. CT. app.) ("In and of itself, a reversal by this Court is insufficient to overcome the presumption [of...

The court, finding that the Defendant understand the nature of the charges against him, that the Defendant understands the elements of the charges against him and the elements of an lesser included offenses and any defenses available to him at trial, that the Defendant's plea is voluntary, and that the Defendant knowingly and voluntarily waives his right of confrontation, and that there is a factual basis for the Defendant's plea....

probable cause]; otherwise, every decision reversed by this Court could form the basis for a malicious prosecution claim"). In Singleton, *supra*, the Second Circuit Court of Appeals held that a prosecution resulting in only a hungjury-not even a conviction-precluded the plaintiff's claim of malicious prosecution under § 1983. This court finds persuasive the following analysis in Singleton:

> Without proof that the criminal prosecution based on probable cause was terminated in the defendant's favor, no federal claim exists. To hold otherwise would permit a defendant to relitigate the issue of probable cause by way of a § 1983 action, despite the state court's determination of that issue against him after full and fair consideration of the evidence, thus posing the prospect of harassment, waste and endless litigation, contrary to principles of federalism.

Id. at 194

Akers' two criminal convictions for assault and stalking are unfavorable, final terminations of the criminal charges. They have not been reversed and they remain valid, outstanding, and dispositive of Akers criminal guilt on both charges. Thus, Akers is precluded from asserting claims under § 1983, § 1985 and RICO. This conclusion is consistent with the holding and language of Heck v. Humphrey.

> §1983 actions are subject to the 'hoary rpinciple' that civil tort actions are not the appropriate vehicle for challenging the validity of convictions and sentences. The express objective of this holding were to prevent 'a collateral attack on [a] conviction through the vehicle of a civil suit.'

Id. at 1144S. Ct at 2371

Accordingly, Akers claims of deprivations of constitutional rights premised on §§ 1983, 1985 and RICO statutes are dismissed.

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IV.

DISMISSAL UNDER THE *ROOKER-FELDMAN* DOCTRINE

Several of the defendants have also raised the Rooker-Feldman doctrine as a bar to Akers claims. This doctrine, "a combination of the abstentions and *res judicata* doctrine, stands for the proposition that a federal district court may not hear an appeal of a case already litigated in stat court. A party raising a federal question must appeal a state court decision through the state system and then directly to the Supreme Court of the United States." United States v. Owens, 54 f. 3d271, 274 (6th Cir 1995) (citing District fo Columbia Court of Appeals v Feldman, 460 U.S. 462, 476 (1983); Rooker v. Feldman Trust Co., 263 U.S. 413 (1923). Only the United States Supreme Court has jurisdiction to correct state court judgements. Feldman, 460 U.S. at 482.

This principle is equally true in constitutional cases brought under § 1983, "since federal courts must give 'full faith and credit' to the judicial proceedings of state courts." Gottfried v Medical Planning Services, Inc. 142 F.ed 326,330 (6th Cir.)., cert. denied, 525 U.S. 1041 (1998), citing Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 85 (1984).

In Rowe v. Bank One , Indianapolis NA, 230F.3d 1359, 2000 WL 1477231 96th Cir. Sept. 25, 2000)(Table, unpublished), the Sixth Circuit upheld the dismissal of a § 1983 action brought by a plaintiff claiming that a bank had improperly foreclosed and evicted him from his property in 1988, in violation of Michigan law and his due process and equal protection rights. The court held that Rowe's § 1983 action was precluded by *res judicata* because (1) the state court ruled in favor of the defendant on the merits of the defendant's foreclosure and eviction action; (2) the allegations Rowe raised in the "illicit"

foreclosure action, i.e. perjury and falsification of records, were either raised or could have been raised in the prior state court actions; and (3) Rowe's § 1983 federal complaint involved the same parties or their privies. Additionally, the Sixth Circuit concluded that...

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...the Rooker-Feldman doctrine precluded Rowe's § 1983 claims because they could be-or are- described as "the functional equivalent of an appeal from the state court judgments in favor of the defendant." Rowe v. Bank One at **1.

The Rooker-Feldman doctrine-clearly dictates that this court lacks subject matter jurisdiction to entertain Akers'§ 1983 and § 1985 claims, as well as the RICO claims, because they are a collateral attack on his two state court convictions. Akers cannot invoke federal jurisdication by couching his claims in terms of a civil rights action. See Ritter v. Ross, 992 F 2d 750,754 (7th Cir. 1993, cert, denied, 510 U.S. 1046 (1994). Akers' demand for damages in inextricably interwined with the state court's two judgements of conviction, and this court therefore lascks jurisdiction to review that decision under the Rooker-Feldman doctrine.

V.

ALTERNATIVE GROUNDS FOR DISMISSAL

Even if Akers complaint were not barred by Heck v. Humphrey and the Rooker-Feldman doctrine, the complaint suffers from other deficiencies, which the court will now address.

1. Preclusive Effect of 1999 Civil Rights Order

The 1999 Civil Rights Order dismissed Akers claims against five defendarts he names in the instant case: Bishop, Overstreet, Swartz, Red Corn and Clark. The 1999 civil rights action stemmed from essentially the same set of facts and occurrences (through and including May 10, 199) which form the basis of the instant complaint. As discussed, the instant complaint does contain some, but not many, facts alleged to

have occurred subsequent to May 10, 1999. While Akers has not proceeded in the instant case in *forma pauperis (IFP)*, case law governing IFP proceedings (which usually also involve *pro se* plaintiffs) is persuasive. Courts may appropriately dismiss IFP actions as frivolous when the action "seek[s] to relitigate claims which allege...

...substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the IFP plaintiff." Wilson v. Lynaugh, 878 F. 2d 846, 850 (5th Cir. 1989); see also Curtis v. Boggs. 2001 WL 649735 (N.D. Tex.), Robertson v. Burger King Corp. 1994 WL 424431 (E.D. La.).

Under Wilson, this court deems it appropriate to dismiss the instant action against Bishop, Overstreet, Swartz, Red Corn and Clark as frivolous. The present claims against these defendants are essentially repetitive of the claims Akers asserted in the 1999 civil rights action. Akers alleges "substantially the same facts that arise from the commons series of events that were unsuccessfully litigated by Plaintiff in [199]." Curtis v. Boggs at **2. Thus, dismissal of Akers complaint against these defendants is appropriate on these grounds.

2. 42 U.S.C. § 1985 (2)

Akers' complaint fails to state a claim against the named defendants he alleges violated 42 U.S.C. § 1985(2). In order to state a claim under § 1985(2), a plaintiff must show either: (1) the existence of a conspiracy to use threat, force or intimidation of a witness or party to obstruct justice in any court of the United States, Dooley v. Reis, *supra*, or (2) class-based invidious discriminations with respect to a state court proceeding, Usher v. City of Los Angeles, *supra*.

With regard to the first prong of § 1985(2), Akers complaint states no claim because his complaint alleges no proceeding pending in any federal court, which involved a conspiracy to deter, by force, intimidation or threat, any party or witness, or which involved tampering with a juror. [11] Thus, the first prong of § 1985(2) is unavailable as a jurisdictional basis.

Was v. Young, 795 F. supp. 1041, 1053 (E.D. Mich. 1992.) with respect to the second prong of § of 1985(2), a plaintiff must...

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[11] All of the facts of which Akers complained occurred in the Commonwealth of Kentucky Fayette Circuit and District Courts.

...alleged the existence of "some racial, or perhaps otherwise class based, invidiously discriminatory animus behind the conspirators' action." Kush v. Rutledge, 460 U.S. 719, 726 (1983); Bennett v. Batchik, 1991 WL 110385 (6th Cir. June 24, 1991). The second prong of § 1985(2) focuses on the deprivation of equal protection of the laws with respect to state court judicial proceeding and thus the courts have required a plaintiff to demonstrate his or a class of person' denial of equal protection of the law.

Akers has not stated a denial of equal protection of the law; at best, his complaint alleges he did not receive due process of the law at the hands of Overstreet and Red Corn during his two trials.[12] Akers does not allege a racial or class-based invidious discrimination behind any of the defendants' actions, as require by Kush v. Rutledge, *supra*. Akers asserts a theory that because he, a man, was prosecuted for domestic violence offenses, he was in some sort of protected class of person. This assertion does not rise to the level of establishing that Akers was denied the equal protection of any law as a result of a racial or otherwise class-based invidiously discriminatory animus. Akers has not alleged that his race, or any other classification that might apply t him, has been the object of a "class-based invidiously discrimination animus," as defined in Kush v. Rutledge, *supra*; Phillips v. Intl. Ass'n. of Bridge, Structural and Ornamental Iron Workers, 556 F2d 939, 941 (9th Cir. 1977). Akers has failed to argue that any defendants conspired to deprive him of equal protection of the law by acting with discriminatory intent. Even if § 1985(2) applied to the situation, Akers has failed to make a sufficient allegations of conspiracy to

support such an action.

The facts, as alleged by Akers, are that his former spouse initiated and EPO against him as a result of a physical confrontation with him and that his continued efforts to violate the EPO resulted...

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[12] 42 U.S.C. § 1985(3) does not apply where the defendants are alleged to have conspired to deprive a victim of due process of law; it applies to alleged deprivation of equal protection of the law. Lewis v. Brautigam, 227 F. 2d 124 (5th Cir. 1955).

...in stalking charges and a subsequent indictment in Fayette Circuit Court. A jury trial ensued where the judge presided, a prosecutor prosecuted, and witnesses testified against him; a verdict was rendered from which he appealed and a retrial occurred thereafter. Akers' allegations that these events, which occurred in the normal process of a criminal prosecution, constituted a conspiracy simply have no merit. Leon v. Federal Reserve Bank of Chicago, 823 F.2d 928, 930 (6th Cir. 1987); Pillette v. Detroit Police Dept., 661 F. Supp. 1145, 1148 (E.D. Mich. 1987); Porter v. Bainbridge, 405 F. Supp. 83, 91 (D. Ind. 1975) (holding that an allegations of individual acts of several defendants taken collectively to allegedly violate rights does not support an action under § 1985(2));Moss v. Perkins, 682 F. Supp. 395, 396 (N.D. III 1988)(concluding that, in the absence of specific evidence of conspiratorial agreement, the fact that defendants are associated in some manner cannot be used to prove existence of a conspiracy). Akers' section 1985(2) claim must be dismissed.

3. 42 U.S.C. §1985(3)

42 U.S.C. § 1985(3) pertains to a conspiracy to interfere with civil rights, specifically the conspiracy to deprive a person or a class of persons equal protection of the law. In order to bring a 42 U.S.C. § 1985(3) claim, a plaintiff must demonstrate: (1) a conspiracy; (2) that the conspiracy is for the purpose of

depriving, either directly or indirectly, any person or class of persons of equal protections of the laws, or of equal privileges and immunities under the laws; (3) and act in furtherance of the conspiracy; and (4) injury to either person or property, or deprivation of any right or privilege of the United State citizen. Volunteer Medical Clinic, Inc. v. Operation Rescue, 948 F 2d 218, 223 (6th Cir. 1991) (citing United Dhd of Carpenters & Joiners v. Scott, 463 U.S. 825 (1983); Conklin v. Lovely, 834 F2d 543,548 (6th Cir. 1987). A fifth requirement was established by the Supreme Court in Griffin v. Breckenridge, 403 U.S. 88, 102 (1971), which also requires that: (5) the conspiratorial conduct of which the plaintiff complains must be propelled by "some racial, or perhaps...

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...otherwise class-base, invidiously discriminatory animus." Aulson v. Blanchard, 83 F.3d 1,2 (1st Cir. 1996) (citing Id.). Akers has no actionable claim under § 1985(3), because he has not alleged facts demonstrating that the defendants' conduct was motivated by racial or class-based discriminatory animus. Azar v. Conley, 456 F 2d 1382, 1386 (6th Cir. 1972).

Section 1985(3) covers only conspiracies against: (1) classes who receive heightened protection under the Equal Protection Clause; and (2) "those individuals who join together as a class for the purpose of asserting certain fundamental rights." Bartell v. Lohiser, 215 F 3d 550, 559 (6th Cir. 2000), citing Browder v. Tipton, 630 f 2d 1149, 1150 (6th Cir. 1980). See also Haverstick Enterprises, Inc., v. Financial Federal Credit, Inc., 32 F.3d 989, 994 (6th Cir. 1994). Thus, in Bartell, not even alleged discrimination on the basis of a mental disability was actionable under § 1985(3) as " the Supreme Court has not conferred suspect or quasi-suspect status on statutory classifications concerning the disabled." Bartell, 215 F.3d at 560.

Akers alleges no facts even remotely suggesting he is a member of any class receiving heightened protection under the Equal Protection Clause. Akers has not alleged that any defendants harbored any class-based animus toward any class

of which Akers is a member, in the class's attempt to assert a fundamental right. At most, Akers complains generally about domestic violence laws that were validly enacted in 1993, alleging that the real purpose of domestic violence to divest men, in general, of their property. Akers has failed to allege facts which reveal "class-based invidious discriminatory animus" or intent on the part of the alleged conspirators. Accordingly, Akers' claims asserted under 42 U.S.C. & 1985(3) are dismissed.

4. RICO Claims

Akers has alleged violations of the Racketeer Influenced and Corrupt Organization ("RICO") Act codified at 18 U.S.C. § 1962. A civil RICO remedy is created in 18 U.S.C. § 1964(c) for "[a]ny...

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...person injured in his business or property by reason of a violation of section 1962 of this chapter. A violation of RICO under § 1962(c) requires: (1) conduct, (2) on an enterprise, (3) through a pattern (4) of racketeering activity. Sedima. S.P.R.L. v. Imirex Co., 473 U.S. 479 (1985). See also Kentry v. Bank One of Columbus NA. 92 F. 3d 384 (6th Cir. 1996). In order to establish "racketeering activity," the plaintiff must allege a predicate act. It is unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 42 U.S.C. § 1962(c).

The definition of "enterprise" includes "any individual, partnership, corporation, association or other legal entity, and any union or group of individual associated in fact although not a legal entity." 18 U.S.C.§ 1961 (4). Two elements are necessary to establish an "enterprise" under RICO, 18 U.S.C.A.§ § 1961(4), 1962(b),(c): First, there must be evidence of ongoing organization, formal or informal, and evidence that various

associates function as a continuing unit; and second, the enterprise must have an existence separate and apart from the pattern of activity in which it engaged. Medallion TV Enterprised, Inc. v. Selec TV of California, Inc. 627 F. Supp. 1290 (C.D. Cal. 1986) aff'd 833 F.2d 1360, cert. denied, 492 U.S. 917).

Akers' allegation based on violations of the civil RICO statue, § 1964(c), fails to state a claim on which relief can be granted. Domestic relations disputes do not constitute a basis for the invocation of RICO remedies. McMurtry v. Brasfield, 654 F. Supp. 1222 (E.D. Va. 1987). McMurtyr involved an attempt by a father unhappy about his former spouse's removal of their son to Texas. Like Akers, McMurtry brought a RICO civil suit against the mother, the mother's father, and the mother's law firm, alleging mail fraud as a predicate act of RICO conspiracy. The Eastern District of Virginia concluded that the plaintiff had failed: (1) to adequately demonstrate injury to...

...business or property as his injuries were personal in nature; (2) to establish racketeering activity based on mail fraud involving correspondence between attorneys, concluding that such a finding would chill an attorney's effort and duties to represent a client during pending litigation; (3) to establish a pattern of racketeering, finding that the "alleged scheme" had only one purpose (to get the boy to Texas); no other parties were defrauded by the acts beyond the one "scheme"; and (4) to establish the elements of RICO enterprise with respect to the defendant law firm, finding that "enterprise" was meant to refer to a being "different from, not the same as . . . the person whose behavior the RICO act was designed to prohibit." Id. at 1226, citing United States v. Computer Sciences Corp., 689 F.2d 1181 (4th Cir. 1982), cert. denied, 459 U.S. 1105 (1983).

Similarly, this court can discern no pattern of racketeering affecting interstate commerce, nor can it find the existence of a relationship affecting anyone other than Akers. Thus, akers' allegations must be dismissed for failure to state a claim on which relief can be based.

5. Judicial Immunity

Akers seeks damages against Defendants Clark, Overstreet, and Goodwine for acts they performed in their judicial capacities. These defendants assert the defense of judicial immunity, which bars any recovery by Akers against them. A plaintiff may recover damages against a judge only when he or she has acted in "clear absence of all jurisdiction." Stump v. Sparkman, 435 U.s. 349, 356-57 (1978), quoting Bradley v. Fisher, 13 Wall, 335, 351, 20L.Ed. 464 (1871). Immunity extends to complaints arising out of judicial conduct in criminal as well as civil suits. Pierson v. Ray, 386 U.S. 547 (1967). Furthermore, the common law immunity of judges applies to suits under 42 U.S.C. § 1983, alleging deprivations of constitutional rights. Pierson v. Ray, *supra*.

Defendants Clark, Overstreet and Goodwine were all acting within their applicable jurisdiction when they presided over their respective proceeding involving Akers between 1994 and...

...2000. Akers alleges that Overstreet, in particular, ruled against him on all motions pertaining to his criminal felony charges and on related matters such as bail. He complains that her failure to follow the Court of Appeals' 1998 opinion reversing and remanding was malicious and fraudulent, causing him to be unlawfully imprisoned and to lose money in his business. In its May, 2000 Opinion, the Kentucky Court of Appeals commented on Overstreet's failure to follow its prior 1998 instructions on separate trials and evidentiary matters. Nonetheless, her conduct is protected by judicial immunity and is not actionable under § § 1983, 1985, or RICO. The Supreme Court has specifically held that even the commission of grave procedural errors, including those involving due process, do not constitute action taken in the clear absence of all jurisdiction. Stump, 435 U.S. at 359. See Sevier v. Turner, 742 F2d. 262 (6th Cir. 1984), in which the Sixth Circuit held that judge's failure to inform the plaintiff of his constitutional rights, though a grave procedural error, did not subject him to damages.

Akers alleges that Overstreet acted maliciously toward him throughout the pendency of his felony proceeding over which she presided. Judicial action, even if sone maliciously, or even if it was in excess of his or her authority, will not subject a judge to liability. Stump at 485 U.S. 356-357. See also Mireles v. Waco, 502 u.s. 9, 11-12 (1991) (per curiam) (immunity is available even if a judge acts erroneously, corruptly, or in excess of his jurisdiction), and Mitchell v. McBryde, 944 F. 2d 229, 230 (5th Cir. 1991) (fact that judge was alleged to have acted in a conspiracy and committed grave procedural errors was insufficient to avoid absolute judicial immunity). Akers' complaint alleges nothing that amounts to these judges' acting outside their roles as judges or performing non-judicial acts. He alleges, at most, that he did not agree with their decisions; that they were wrong; and that as a result of those decision, he was adversely affected. While Akers continually describes the Judges' conduct as "fraudulent," he alleges no facts establishing that they in fact committed any...

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"fraud" against him. They simply rendered rulings adverse to Akers' interest. A judge's rulings on motions, even if they are detrimental to a litigant's case, constitute judicial actions and are thus protected by judicial immunity. Stump, 485 U.S. at 363 (disagreement with action taken by judge does not deprive him of judicial immunity). See also Clark v. Taylor, 627 F.2d 284 (D.C.Cir. 1980). Thus, absolute judicial immunity bars Akers' claims against all of the defendant judges.

6. Prosecutorial Immunity and Quasi-Judicial Immunity

Like the judges, the prosecutors, Lou Anna Red Corn, Cindy G. Swartz, and Todd D. Ferguson, enjoy prosecutorial immunity because they acted within the scope of their duties in initiating and pursuing a criminal prosecution and in presenting the Commonwealth of Kentucky's case at trial and on appeal. Imbler v. Patchman, 424 U.S. 409 (1976). See also Grant v. Hollenbach, 870 F 2d. 1135 (6th Cir. 1989) (prosecutors were

absolutely immune from the claim they conspired to knowingly bring false charges despite claims of failure to investigate facts and alleged commission of perjury before the grand jury). Therefore, akers has no claim against Defendants Red Corn, Swartz and Ferguson.

With respect to Defendants Witt, the Fayette County Sheriff's Office, the Commonwealth Attorney's office, and the Fayette Circuit Clerk's Office, Akers has not articulated any facts substantiating that they violated his constitutional rights; but even if he had so stated, these defendants enjoy a quasi-judicial immunity pursuant to Bush v. Rauch, 38 F 3d 842 (6th Cir. 1994). Quasi-judicial immunity extends to non-judicial officers acting as arms of the court, who are "performing tasks so integral or intertwined with the judicial process that these persons are considered as arms of the judicial officer which is immune." Id. At 847, citing Scruggs v. Moellering, 870 F2d376 97th Cir.), cert. denied, 493 U.S. 956 (1989). This court finds that these defendants were performing tasks integral to the judicial process concerning their limited involvement with Akers

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At a minimum, these defendants are entitled to assert qualified immunity as a defense to Akers' claims. Akers has failed to articulate what, if any, "clearly established right of which a reasonable person would have known" these particular defendants violated. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). A clearly established right must be determined by a district court finding binding precedent of the Supreme Court, its courts of appeals, or itself. Ohio Civil Serv. Employees Assoc. v. Seiter, 858 F2d 1171 (6th Cir. 1988). The court finds that these defendants have qualified immunity. Russo v. City of Cincinnati, 953 F. 2d 1036 (6th Cir. 1992).

7. Witness Immunity

Defendants Layne, Shannon, Vaughn, Rushing, Fleming, and Bishop, as witnesses in judicial proceeding against Akers, are immune from civil liability under 42 U.S.C. § 1983, even if

they knowingly gave perjured testimony. Briscoe v. Lahue 460 U.S. 325, 103 S. Ct 1008 (1983). See also Macko v. Bryron, 760 F.2d 95 (6th Cir. 1985). Thus, Akers allegations that these witnesses/defendants allegedly gave false testimony during his two trial do not form the basis for a viable claim against these defendants.

8. 42 U.S.C. § 1983

Akers has alleged that Defendants Layne, Shannon, Vaughn, Fleming, Rushing, Kelly, Williams, and Bishop have all violated § 1983, which is a federal civil rights statute. To establish a right to relief under § 1983, the plaintiff must plead and prove two essential elements. He must show, first, that he has been deprived of right secured by the Constitution or laws of the United States, and, second, that the defendants allegedly depriving him of those right acted under color of state law. Parratt v. Taylor, 451 U.S. 527, 535 91981); O'Brien v. City of Grand Rapids, 23F.3d 990 (6th Cir. 1994).

A plaintiff cannot assert a § 1983 claim against an individual who did not act under color of state law. Lugar v. Edmondson Oil Co., 457 U.S. 922, 102 S. Ct. 2744 (1982), and Kelm v. Hyatt, 44 F.3d 415 (6th Cir. 1955). Akers has not alleged that these defendants acted under color of state law in allegedly depriving him of his constitutional rights. Carolyn Bishop's utilization of the Fayette District Court's domestic violence protection procedures does not convert her into a state color. Kelm at 421 (wife's utilization of a state statute did not cause her to be a "state actor"). See also Nowicki v. Bruff, 103 F3d, 130, 1996 WL 694141 (6th Cir. Dec. 3, 1996) (dismissal of plaintiffs § 1983 claims against his ex-wife and her two attorneys, arising out of a domestic relations case, was proper as they did not act under color of state law).

Akers' allegations that the testimony of Vaughn, Layne, Shannon, Fleming, Bishop and Rushing against him at trial and Bishop's testimony against him before the grand jury violated

his rights under federal law fail, because § 1983 does not allow for recovery of damages against a private party for testimony in a judicial proceeding. Briscoe v. Lahue,*supra*, 103 S. Ct. at 1112-13 ("It is beyond question that when a private party gives testimony in open court in a criminal tril, that act is not performed 'under color of law'."). See also Miller v. Glanz, 948 F. 2d1562 (10th Cir 1991) (plaintiff's § 1983 claims against prosecution witnesses who procured plaintiff's battery convictions were properly dismissed, as was plaintiffs complaint that the same defendants conspired to violate plaintiff's civil right by giving false testimony). Accord, Alioto v. City of Shively, Kentucky, 835 F.2d 1173, 1174 (6th Cir. 1987) (Briscoe immunity extended to alleged conspirators to commit perjury).

This court, therefore, dismisses Akers' complaint in its entirety on the basis that it fails to state a claim against any of the named defendants. Fed.R.Civ.P. 12(b)(1).

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DISMISSAL OF STATE CLAIMS

The federal claims against all of the named defendants will be dismissed in this actions; therefore, Akers' pendent state claims, asserted under Tennessee law, should be dismissed as well. United Mine workers of America v. Gibbs, 383 U.S. 715, 726 (1966). When a plaintiff has no federal cause of action, a district court may exercise its discretion to dismiss his pendent state law claims. Gregory v. Hunt, et. al., 24 F. 3d 781 (6th cir. 1994). With regard to the construed state law tort claim of malicious prosecution, since the plaintiff has no federal claim, the court declines supplemental jurisdiction to consider the state claim. See 28 U.S.C. § 13679(c)(3) (district court may decline to exercise supplemental jurisdiction if the court has dismissed all claims over which the court has original jurisdiction). Akers' state tort claim of malicious prosecution is dismissed.

Accordingly, this court being advised, IT IS ORDERED that this action (02-CV-162-JBC) is DISMISSED WITH PREJUDICE and judgement shall be entered contemporaneously with this Memorandum Opinion and Order in favor of the

named defendants herein.

This the 25th day of September, 2002.

s/Jennifer B. Coffman
JENNIFER B. COFFMAN, JUDGE

Date of Entry and Service:

[END OF DOCUMENT]

FEB 21 2002
LEONARD GREEN, CLERK

Case No: 01-6243
UNTIED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ORDER

JAMES G. AKERS
Plaintiff - Appellant

v.

CAROLYN P. BISHOP, et al
Defendants - Appellees

BEFORE: KENNEDY and DAUGHTREY, Circuit Judges; Bell, Chief District Judge*

Upon consideration of the motion previously filed by the appellant to stay the mandate,

It is ORDERED that the motion be and it hereby is DENIED.

ENTERED BY ORDER OF THE COURT

"s" / Leonard Green, Clerk

* The Honorable Robert Holmes Bell, Chief United States District Judge for the Western District of Michigan, sitting by designation.

FILED
JAN 24 2002
Leonard Green, Clerk

No. 01-6243

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS,)
)
Plaintiff-Appellant)
v.) **ORDER**
)
)
CAROLYN P. BISHOP, et, al)
)
Defendants-Appellees)

Not Recommended For Full-Text Publication.
Sixth Circuit Rule 28(g) Limits citation to specific situation. Please see rule 28(g) before citing in a Proceeding in a court in the Sixth Circuit limited, a copy must be served on other parties and the court.. This notice is to be prominently displayed if this decision is reproduced.

Before: KENNEDY and DAUGHTRY, Circuit Judges; BELL, Chief District Judge.*

This matter is before the court upon consideration of motions of the appellees to dismiss the appeal on the basis that the order transferring the case to a different district court is not a final or appealable order. The appellant responded arguing that the order is appealable under the collateral-order doctrine. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S., 541, 546-47 (1949). The appellant also filed a motion seeking reconsideration of the clerk's letter holding the briefing schedule in abeyance pending a ruling on the motions to dismiss.

A review of the documents before the court indicates that the appellant filed a civil complaint in the United States District

Court for the Middle District of Tennessee. The court transferred the case to the United States District for the Eastern District of Kentucky. Appellant appealed the order transferring the case.

This court lacks jurisdiction over this appeal. The order transferring the case is not appealable. *See SongBryd, Inc. v. Estate of Grossman*, 206 F.3d 172, 176(2d Cir), *cert. denied* 531 U.S. 824 (2000); *Lemon v. Druffel*, 253 F.2d 680, 683 (6th Cir. 1958). A ruling on a motion to...

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*The Honorable Robert Holmes Bell, Chief United States District Judge for the Western District of Michigan, sitting by designation.

...transfer is not appealable under the collateral order exception. *FDIC v. McGlamery*, 74, F.3d 218, 222(10th Cir. 1996); *Middlebrooks v. Smith*, 735 F.2d 431,432(11th Cir. 1984).

It is ordered that the appeal be dismissed. The motion for reconsideration is denied as moot.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green, Jr.
Clerk

[END OF DOCUMENT]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES G. AKERS, Plaintiff	)	
v.	)	No. #:00-1142
	)	JUDGE ECHOLS
CAROLYN P. BISHOP, DORIS FLEMING, ALLEN I. RUSHING, TODD M. LAYNE, DONALD SHANNON, JERRY L. KELLY, JOHN J. VAUGHN, THOMAS D. CLARK, KATHERINE WITT, PAMELA MILLER, LOU A. RED CORN, REBECCA M. OVERSTREET, CINDY G. SWARTZ, ERNEST W. WILLIAMS, TODD D. FERGUSON, PAMELA D. GOODWINE, and various JOHN and JANE DOES, Defendants.	)	

ORDER

Presently pending before the Court are Motions to dismiss by Defendants Bishop, Williams, and Rushing (Docket Entry Nos. 55, 71 & 73) and Motions to Dismiss or Transfer by all other Defendants (Docket Entry Nos. 31, 34, 37, 38, 42, 51, & 76). Plaintiff has filed several documents in opposition.

For the reasons explained in the Memorandum entered contemporaneously herewith, Defendants' Motions to Transfer are hereby GRANTED, and this case is hereby TRANSFERRED to the United States District Court for the Eastern District of Kentucky.

Defendants' Motions to Dismiss are hereby DENIED AS MOOT.

It is so ORDERED.

s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

1

This document was entered on
the docket in compliance with
Rule 58 and/or Rule 70(a).

FRCP on 9-18-01 by jr

[END OF DOCUMENT]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES G. AKERS,
Plaintiff
v.

CAROLYN P. BISHOP, DORIS FLEMING, ALLEN I. RUSHING, TODD M. LAYNE, DONALD SHANNON, JERRY L. KELLY, JOHN J. VAUGHN, THOMAS D. CLARK, KATHERINE WITT, PAMELA MILLER, LOU A. RED CORN, REBECCA M. OVERSTREET, CINDY G. SWARTZ, ERNEST W. WILLIAMS, TODD D. FERGUSON, PAMELA D. GOODWINE, and various JOHN and JANE DOES,
Defendants.

No. #:00-1142
JUDGE ECHOLS

MEMORANDUM

Presently pending before the Court are Motions to dismiss by Defendants Bishop, Williams, Rushing (Docket Entry Nos. 55, 71 & 73) and Motions to Dismiss or Transfer by all other Defendants (Docket Entry Nos. 31, 34, 37, 38, 42, 51, & 76). Plaintiff has filed several documents in opposition.

For the reasons explained herein, Defendants' Motions to Transfer will be GRANTED, and this case will be TRANSFERRED to the United States District Court for the Eastern District of Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT.

Plaintiff, who proceeds pro se, has filed a 134-page Complaint (Docket Entry No. 1) against sixteen individuals and numerous unnamed defendants. He alleges claims for violations of his...

This document was entered on
the docket in compliance with
Rule 58 and/or Rule 70(a).

FRCP on 9-18-01 by jr

...constitutional rights under 42 U.S.C. § 1983 (1994 & Supp. IV), conspiracy to violate his constitutional rights under 42 U.S.C. § 1985 (1994), and violations of the Racketeer and Influenced Corrupt Organizations Act (RICO), 18 U.S.C. § 1961-68 (1964 & Supp. IV). Because the claims are based on federal law, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (1994).

This lawsuit arises from Plaintiff's criminal convictions for stalking and assaulting Defendant Carolyn Bishop, his former wife. The defendants include judges, prosecutors, and witnesses involved in the criminal proceeding which took place in state courts in Kentucky. Plaintiff alleges in the instant suit that his Kentucky state court convictions resulted from an unlawful conspiracy between the Defendants.

Defendants now move to dismiss for lack of jurisdiction pursuant to Rule 12(b) (2), for lack of venue pursuant to Rule 12(b) (3), and for failure to state a claim upon which relief can be granted pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure. All Defendants except Bishop, Williams, and Rushing seek, in the alternative, to have the case transferred pursuant to either 28 U.S.C. § 1404(a) (1994) or 28 U.S.C. § 1406(a) to the united States District Court for the Eastern District of Kentucky.

The applicable venue statue states,

> A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in . . . a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . . .

28 U.S.C. § 1391(b) (2) (1994).

The Court has reviewed Plaintiff's lengthy Complaint, and the only events alleged to have occurred in this District are some telephone calls to and from his former wife, Defendant Carolyn Bishop, in Lexington, Kentucky, which may have violated a protective order and formed the basis for contempt charges, and his extradition in October 1995 from Tennessee in Kentucky after his arrest. All other events alleged in the Complaint occurred in the Eastern District of Kentucky, including his divorce, the events that led to his arrests, his trial in state court, sentence, and the location of his incarceration. Therefore, based upon the record before the court, the Court concludes that "a substantial part of the events or omissions giving rise to the claim[s] occurred" in the Eastern District of Kentucky. Only a few tangential acts/events are alleged to have occurred in the Middle District of Tennessee. Consequently, the Court finds that venue does not lie in this District under 28 U.S.C. § 1391(b)(2).

However, RICO claims have a special venue statute, 18 U.S.C. § 1965 (1994), which states in part:

> (a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, if found, has an agent, or transacts his affairs.
>
> (b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of Justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

18 U.S.C. § 1965 (a) and (b).

The only Defendant who resides, is found, has an agent or transacts his affairs in this District is Ernest Williams.[1]

Apparently, Plaintiff does not dispute that venue cannot lie in this District as to his RICO claims against the other fifteen Defendants based on 18 U.S.C. § 1965 (a). Giving Plaintiff's allegations the liberal construction afforded pro se litigants, however, he maintains that venue exists here as to the claims against the remaining Defendants pursuant to 18 U.S.C. § 1965 (b). As expressly stated in the statute, before a district court can summons partied from other districts to answer to a RICO claim, it must find that "the ends of justice" so require.[2] What is required to meet "the ends of justice" requirement under the statute is not crystal clear, but, at a minimum, the Court must determine that there is no other district which has personal jurisdiction and venue over all members of the alleged RICO conspiracy. See Butcher's Union Local No. 498 United Food & Commercial Workers v. ...

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[2] Several Defendants contend that Plaintiff has fraudulently joined Defendant Williams in order to avail himself of the RICO venue statue. As the text of the statute indicates, a district court must have personal jurisdiction over at least one defendant pursuant to 1965(a) in order to bring the other members of an interstate conspiracy before the court pursuant to 1965(b). See Butcher's Union Local No 498, United Food & Commercial Workers v. SDC Inv., Inc., 788 F.2d 535, 539 (9th Cir. 1986). Since it is not essential to the Court's resolution of the pending motions, the Court expresses no opinion on this issue.

[2]Even then, a district court is not mandatorily required to bring the other parties before the court, since the statue provides only that the Court "may" cause such parties to be summoned and process be served in other districts. See 18 U.S.C. § 1965 (b).

SDC Inv., Inc., 788 F2d 535, 538-39 (9th Cir. 1986). The Second Circuit, in discussing an assertation of personal jurisdiction based upon 18 U.S.C. § 1965 (b), stated as follows,

> This jurisdiction is not automatic but requires a showing that the "ends of justice" so require. This is an unsurprising limitation. There is no impediment to prosecution of a civil RICO action in a court foreign to some defendants if it is necessary, but the first preference, as set forth in § 1965 (a), is to bring the action where suits are normally expected to be brought. Congress has expressed a preference in § 1965 to avoid, where possible, haling defendants into far flung fora.

PT United Can Co. Ltd. v. Crown Cork & Seal Co., Inc., 138 F.3d 65, 71-72 (2d Cir. 1998).

Based upon the record in this case, the Court finds that the "ends of justice" do not require that the other fifteen defendants be haled into this Court from other districts. First, the entire case can be litigated in the Eastern District of Kentucky, where most of the Defendants are located and almost all the alleged illegal acts occurred. As noted previously, venue is proper in that District and said District Court has personal jurisdiction over every defendant under Section 1965. More specifically, thirteen Defendants live there; Defendant Rushing, who now lives in Knoxville, lived there at the time of the events that led to this lawsuit; and Defendant Williams, who lives in Franklin, Tennessee, represented Plaintiff in that District during his trial there. See Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (personal jurisdiction requires "certain minimum contacts" with the forum state and "that the maintenance of the suit [against the non-resident defendant] does not offend traditional notions of fair...

---

play and substantial justice."). Based upon the facts and circumstances of this case, the Court finds that justice does not

require that this case be litigated here.

Second, even if the Court permitted Plaintiff to litigate his RICO claims here, venue would still be improper as to his Section 1983 and Section 1985 claims because a substantial part of the events giving rise to Plaintiff's claims did not occur in this District (28 U.S. C. § 1391 (b)(2) and Title 18 U.S.C. § 1965 (a) applies only to the RICO claims; not the Section 1983/Section 1985 claims. There has been no suggestion that this Court should dismiss the Section 1983/Section 1985 claims or sever or transfer them to the Eastern District of Kentucky, and proceed to trial here on the RICO claims. Such a course of action would not promote judicial economy and would delay and add additional hardships to the parties. Therefore, for the reasons stated, the Court concludes that venue does not properly lie in this District for Plaintiff's RICO Claims.

Having determined that proper venue does not lie in this District, the Court nest addresses the issue of dismissal or transfer. Title 28 U.S.C. § 1406 (a) provides as follows:

> The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

As previously noted, this suit could have been brought in the Eastern District of Kentucky, and the venue and personal jurisdiction requirements are satisfied there as to every claim of

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the Plaintiff. Since an outright dismissal might subject Plaintiff's claims to legal defenses under applicable statutes of limitations, the Court finds that it is in the interests of justice to transfer the case to the Eastern District of Kentucky. [3]

For the foregoing reasons, Defendants' Motions to Transfer will be GRANTED, and this will be TRANSFERRED to the United States District Court for the Eastern District of

Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT.

An appropriate order will be entered.

s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

[3] Given this disposition, the Court need not address Defendants' other arguments including the contentions of the many Defendants who claim that this Court lacks personal jurisdiction over them. See Pittock v. Otis Elevator Co., 8 F3d 325, 329 (6th Cir. 1983) (Citing Goldlawr, Inc. v. Heiman, 369 U.S. 463 (1962)) (transfer under 1406 (a) is permissable even where there is both improper venue and lack of personal jurisdiction in the transfer or forum).

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C.O.A. CASE NUMBER: 02-6235
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**MOTION FOR RECONSIDERATION**
	)	
	)	
	)	
CAROLYN P. BISHOP; et al,	)	
	)	
Defendants-Appellees.)		

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF KENTUCKY-LEXINGTON DIVISION

COMES THE PLAINTIFF-APPELLANT, James G. Akers (hereinafter "Akers"), **without counsel** in strict accordance with Title 28 U.S.C. § 1654 and, pursuant to 6 CIR. R. 27(g) & 6 CIR. R.45(b), respectively, moves this Honorable Court to reconsider Its "ORDER" denying the filing of Akers' "PETITION FOR EN BANC DETERMINATION" as served and filed on May 19, 2003. In support thereof, Akers asserts as follows:

LEGAL ARGUMENT

1. On May 19, 2003, Akers timely served and filed his "PETITION FOR EN BANC DETERMINATION" in strict accordance with Title 28 U.S.C. 1654, FRAP 26(a) & (c), 6 CIR. I.O.P. 35(b), FRAP 40(a)(1) & (2), 6 CIR. I.O.P. 40(a) at lines 5 through 9, respectively.

2. **Of paramount importance herein**, and that which Akers relies upon, is the specific language contained within FRAP 26(a) & (c), and FRAP 40(a)(1), respectively, i.e., as follows:

FRAP 26. COMPUTING AND EXTENDING TIME

(a) Computing Time. The following rules apply **in computing any period of time specified in these rules or in any local rule, court order**, or applicable statute:

(1) **Exclude the day of the act, event, or default that begins the period.**

(2) **Include the last day of the period** unless it is a Saturday, Sunday, [or] legal holiday... (emphasis and clarification added throughout)

(c) Additional Time After Service. When a party is required or permitted to act within a prescribed period after the paper is served on that party, **3 calendar days are added to the prescribed period unless the paper is delivered on the date of service** stated in the proof of service. (emphasis added)

FRAP 40. PETITION FOR PANEL REHEARING

(a) Time To File; Contents; Answer; Action by the Court if Granted.

(1) *Time.* Unless the time is shortened or extended by local rule, **a petition for rehearing may be filed within 14 days after entry of j u d g e m e n t.** (emphasis added)

3. The "**court order**" affirming the "JUDGEMENT" as entered by Judge Jennifer B. Coffman, United States District

Court for the Eastern District of Kentucky-Lexington Division [Exhibit 02-6235-04 hereto] was entered in this Court until May 2, 2003 [see Exhibit 02-6235-25 hereto]; Akers' responsive "PETITION FOR EN BANC DETERMINATION" was served and filed on May 19, 2003 [see Exhibit 02-6235-24 hereto], **seventeen days thereafter**; Akers' "PETITION FOR EN BANC DETERMINATION" was **clearly** timely filed; **and** the Court is **clearly mistaken** in the denial of its timely filing.

4. Moreover, Akers has **thoroughly** researched the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, Sixth Circuit Rules, Sixth Circuit I.O.P.'s, **and** Local Rules for the Sixth Circuit and can find absolutely nothing which contradicts, overrides, or in any way conflicts those provisions cited within hereinabove ¶2. If, however, such a conflicting rule exists and can be provided, Akers will be more than willing to accept the Court's decision to deny the filing of his "PETITION FOR EN BANC DETERMINATION" and appropriately proceed with a Petition for Writ of Certiorari with the United States Supreme Court.

CONCLUSION

(5) It is obvious from the history of the instant case that the United States District Court for the Eastern District of Kentucky, Sixth Circuit Court of Appeals, the Clerks thereof, and/or the staff of the Clerks thereof, are either unfamiliar with the provisions of Title 28 U.S.C. 1654 or just, simply, refuse to accept those provisions. Whichever the case may be, the language of that statute – **as enacted by the United States Congress** – reads as follows:

> "**TITLE 28 U.S.C. § 1654**. In all courts of the United States, **the parties may plead and conduct their own cases personally** or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." (emphasis added) [see also, Exhibit 02-6235-11, Joint Appendix, page 494 thereof]

There appears to be no room for misinterpretation of, **nor opposition to**, this statute and Akers is determined that – **one way or another** – **it shall be enforced** with respect this case.

WHEREFORE, the Plaintiff-Appellant, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, prays of this Court to: (A) "**RESCIND**" Its "ORDER" denying the filing of Akers' "PETITION FOR EN BANC DETERMINATION" as "untimely"; (B) "**RESCIND**" the mandate prematurely issued by the Court on June 2, 2003; (C) "**STAY**" the mandate in this case until final disposition of Akers' Petition for Writ of Certiorari with the United States Supreme Court; (D) restore the instant case on the docket as an active appeal; & (E) direct that the instant appeal accordingly proceed in strict accordance with the protocol set forth within 6 CIR. R. 35(b).

Respectfully submitted,

JAMES G. AKERS, *Plaintiff-Appellant*
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024
TELEPHONE: 615/834-2843
FACSIMILE: 615/831-9307

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EXHIBIT	DESCRIPTION	PAGE
02-6235-04	"JUDGEMENT" as entered by Judge Jennifer B. Coffman, U. S. District Court for the Eastern District of Kentucky-Lexington Division, on 09/25/02	7
02-6235-23	"ORDER" pursuant to opinion of JJ. CLAY and GIBBONS; CLELAND sitting by designation, affirming Exhibit 02-6235-04 hereinabove, entered 05/02/03	11
02-6235-24	Akers' "PETITION FOR EN BANC DETERMINATION" as served and filed on May 19, 2003 (w/ transmittal letter and postal receipts)	18
02-6235-25	"ORDER" denying the filing of Akers' "PETITION FOR EN BANC DETERMINATION", entered 05/29/03	37

CERTIFICATE OF SERVICE

COMES THE PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, and certifies that I have on this, the 4th day of June, 2003, served one (1) true copy of the foregoing "MOTION FOR RECONSIDERATION", upon lead counsel of record for each and every opposing party, via "UNITED STATES MAIL-FIRST CLASS", postage pre-paid, and in that manner as follows:

(Listing of served Parties and/or their respective Counsel-of-Record are omitted from instant Petition for Writ of Certiorari for the purposes of economy & handling by Court. **See official record for listings.**)

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

[END OF DOCUMENT]

C.O.A. CASE NUMBER: 02-6235
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS,	)	
	)	
Plaintiff-Appellant,	)	
	)	**MOTION FOR LEAVE**
v.	)	**TO FILE AMENDED**
	)	**PETITION FOR EN BANC**
	)	**DETERMINATION**
	)	
CAROLYN P. BISHOP; et al,	)	
	)	
Defendants-Appellees.	)	

ON APPEAL FROM UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY-LEXINGTON DIVISION

COMES THE PLAINTIFF-APPELLANT, James G. Akers (hereinafter "Akers"), **without counsel** in strict accordance with Title 28 U.S.C. § 1654 and, pursuant to FRAP 27(a) & (b), 6 CIR. R. 27(a) thru (c), & 6 Cir. Rule 28(a) at lines 14 thru 16, moves this Honorable Court for leave to file Akers' herewith and contemporaneous "AMENDED PETITION FOR EN BANC DETERMINATION" to supersede and replace, **in its entirety**, Akers' "PETITION FOR EN BANC DETERMINATION" as served and filed on May 19, 2003. In support thereof, Akers asserts as follows:

LEGAL ARGUMENT

1. On May 19, 2003, Akers served and filed the said "PETITION FOR EN BANC DETERMINATION" in strict accordance with Title 28 U.S.C. 1654, FRAP 26(a) & (c), 6 CIR.

I.O.P. 35(b), FRAP 40(a)(1) & (2), and 6 CIR. I.O.P. 40(a) at lines 5 through 9, respectively.

2. It is apparent that, thereafter, an unknown entity at either the Sixth Circuit Court of Appeals or Clerk's office thereof, made unauthorized and unacceptable hand-written notations and/or corrections to Akers' said "PETITION FOR EN BANC DETERMINATION".

3. The said "unauthorized and unacceptable hand-written notations and/or corrections" are detrimental to the intent and overall presentation of Akers' "PETITION FOR EN BANC DETERMINATION".

4. If Akers' herewith and contemporaneous 'MOTION FOR RECONSIDERATION" of the "ORDER" denying the filing of Akers' "PETITION FOR EN BANC DETERMINATION" is "**GRANTED**" - **as it must be if proper consideration is given to FRAP 26(a) & (c)**, Akers will be unduly prejudiced by those said "unauthorized and unacceptable hand-written notations and/or corrections" to Akers' "PETITION FOR EN BANC DETERMINATION" as served and filed on May 19, 2003.

5. The **only amendments** contained within Akers' "AMENDED PETITION FOR EN BANC DETERMINATION" are with respect to "clerical errors".

WHEREFORE, the Plaintiff-Appellant, James G. Akers ("Akers"), **without counsel** in strict accordance with Title 28 U.S.C. § 1654, prays of this Honorable Court to "**GRANT**" the filing of Akers' herewith "AMENDED PETITION FOR EN BANC DETERMINATION".

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, ***Plaintiff-Appellant***
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024
TELEPHONE: 615/834-2843

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02-6235-04	"JUDGEMENT" as entered by Judge Jennifer B. Coffman, U. S. District Court for Eastern District of Kentucky-Lexington Division, on 09/25/02	5
02-6235-23	"ORDER" pursuant to opinion of JJ. CLAY and GIBBONS; CLELAND sitting by designation, affirming Exhibit 02-6235-04 hereinabove, entered 05/02/03	8
02-6235-25	"ORDER" denying filing of "PETITION FOR EN BANC DETERMINATION", entered 05/29/03	15

CERTIFICATE OF SERVICE

COMES THE PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, and certifies that I have on this, the 5th day of June, 2003, served one (1) true and complete copy of the foregoing "MOTION FOR LEAVE TO FILE AMENDED PETITION FOR EN BANC DETERMINATION", upon lead counsel of record for each and every opposing party, via "UNITED STATES MAIL-FIRST CLASS", postage pre-paid, and in that manner as follows:

(Listing of served Parties and/or their respective Counsel-of-Record are omitted from instant Petition for Writ of Certiorari for the purposes of economy & handling by Court. **See official record for listings**.)

s/ James G. Akers

JAMES G. AKERS, *Plaintiff-Appellant*
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

[END OF DOCUMENT]

Case Number: 02-6235

IN THE

United States Court of Appeals for the Sixth Circuit

JAMES G. AKERS,

Plaintiff-Appellant,

v.

CAROLYN P. BISHOP, ***et al,***

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Kentucky-Lexington Division

AMENDED PETITION FOR EN BANC DETERMINATION

This document was prepared by:
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I - INTRODUCTION

1. On May 2, 2003, an "ORDER" pursuant to the decision of a three (3) judge panel was entered in this Court - affirming the "JUDGEMENT" and "MEMORANDUM OPINION AND ORDER, DISMISSING" as entered in United States District Court for the Eastern District of Kentucky [Exhibits 02-6235-04 & 02-6235-05, respectively, Joint Appendix at pages 157-193].

2. As required by FRAP 35(b)(1), the petitioner, James G. Akers (hereinafter "Akers") hereby asserts as follows:

(A) The panel decision conflicts with **numerous** decisions of the United States Supreme Court including, **but not limited to**: *Abney v. United States*, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977) [see Akers' "FINAL BRIEF FOR PLAINTIFF-APPELLANT' at page 5 & 7]; *Cleavenger v. Saxner*, 474 U.S. 193; 106 S.Ct. 496, 501; 88 L.Ed.2d 507 (1985)[***id.***, page 22]; *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949) [***id.***, pages 2, 5, 6, 7, 12]; *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) [***id.***, page 26]; *Cruz v. Beto*, 405 U.S. 319 (1972) [***id.***]; *Ex parte Virginia*, 100 U.S. 339; 25 L.Ed. 676 (1879) [***id.***, page 22]; *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983) [***id.***, page 16]; *Ex parte Young*, 209 U.S. 123 (1908) [***id.***, page 27]; *Firestone Tire & Rubber Co. v. Risjord*, 101 S.Ct. 669, 66 L.Ed. 2d 571 (1981) [***id.***, pages 5, 7, &12]; *Ford Motor Co. v. Dept. of Treasury*, 323 U.S. 459 (1945) [***id.***, page 27]; *Great Northern Life Insurance Co. v. Read*, 322 U.S. 47 (1944) [***id.***]; *Haines v. Kerner, et al*, 404 U.S. 519, 520; 92 S.Ct. 594 (1972) [***id.***, pages 26 & 30]; *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) [Exhibit 02-6235-22, Joint Appendix, pages 850-854]; *Kennecott Copper Corp. v. State Tax Commission*, 327 U.S. 573 (1946) [***supra***, page 27]; *Monroe v. Pape*, 365 U.S. 167 (1946) [***id.***]; *Moor v. County of...*

Alameda, 411 U.S. 693 (1973) [***id.***]; *Myers v. Anderson*, 238 U.S. 368 (1915) [***id.***]; *O'Shea v. Littleton*, 414 U.S.488, 503; 94 S.Ct. 669; 38 L.Ed.2d 674 (1974) [***id.***, page 22]; & *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) [**id.**, page 16]. **Additionally**, the panel decision conflicts with **numerous** decisions of the United States Court of Appeals for the Sixth Circuit, including, **but not limited to**: *Azar v. Conley*, 456 F.2d 1382, 1384 (6th Cir. 1972) [***id.***, page 28]; *Byrd v. Wilson*, 701 F.2d 592, 594 (6th Cir. 1983) [***id.***, page 26]; *Hermansen v. Chandler*, No. 99-5943, 2000 WL 554058 (6th Cir. 2000); *Lucarell v. McNair*, 453 F.2d 836, 838 (6th Cir. 1972) [***supra***, page 28]; *Malone v. Colyer*, 710 F.2d 258, 260 (6th Cir. 1983) [***id.***, page 26]; *Rauch v. Day and Night Manufacturing Corp., et al*, 576 F.2d 697 (6th Cir. 1976) [***id.***, page 27]; & *Westlake v. Williams, et al*, 537 F.2d 857, 858 (6th Cir. 1976) [***id.***, page 28] and, therefore, consideration by the full court is necessary to secure and maintain uniformity of the court's decisions; **and**

(B) The proceeding involves questions of exceptional importance inasmuch as the panel's decision conflicts with **numerous** decisions rendered by other United States Courts of Appeals, including, **but not limited to**: *Boyce v. Alizaduh*, 595 F.2d 948, 951-953 (4th Cir. 1979) [***id.***, page 26]; *Collins v. Chandler Unified School Dist.*, C.A.9 (Ariz.) 1981, 644 F.2d 759 [***id.***, page 5]; *Cooper v. Molko*, D.C.Cal., 512 FR.Supp. 563 (1981) [***id.***]; *Dennis v. Chang*, C.A.9 (Hawaii), 1980, 611 F.2d 1302 [***id.***]; *Eades v. Sterlinski*, 810 F.3d 723 (7th Cir. 1986) [***id.***, page 22]; *McMillan v. Svetanoff*, 793 F.2d 149, (5th Cir. 1986) [***id.***]; *PT United Can Co. v. Crown Cork & Seal Co.*,138 F.3d 65, 71-72 (2nd Cir. 1998) [***id.***, page 5]; *Wiggins v. New Mexico State Supreme Court*, 664 F.2d 812, 815 (10th Cir. 1981) [***id.***, page 26].

3. Pursuant to FRAP 40(a)(2), it is hereby brought to the attention of the full Court that the panel has erred with respect to crucial matters of material fact, ***viz***, that:

(a) Plaintiff-Appellant James G. Akers ("Akers") is, or at any time relevant hereto has been, "a Kentucky resident" [see "ORDER" entered on May 2, 2003, page 2, line 1];

(b) "[T]he substantial part of the events giving rise to Akers's claims occurred in Lexington, Kentucky" [***id.***, page 3, ¶ 3];

(c) Akers' instant case is, in any manner whatsoever, an "appeal of a case already litigated in state court" [***id.***, page 4, lines 8 & 9]; &

(d) Akers "can prove no set of facts in support of his claims that would entitle him to relief" [***id.***, page 4, lines 18 & 19].

4. As well pursuant to 6 Cir. I.O.P. 40(a), it is hereby brought to the attention of the full Court that the panel has erred in Its interpretation and/or application of Federal law insofar as It "affirm(s) the district court's judgement for the reasons stated by the district court" [***id.***, page 3, lines 3& 4]. In other words, the panel affirms the district court's denial of Akers' rights, privileges, and immunities guaranteed by the United States Constitution including, **but not limited to**:

(a) Protection from the unconstitutional enactment and/or enforcement of **any** ***ex post facto*** law as provided by Article 1 - § 10 [Cl. 1] thereof [see Akers' "FINAL BRIEF FOR PLAINTIFF-APPELLANT' at FN7, page 16; & FN8, page 17];[1]

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[1] **This issue is of paramount public importance** in light of the position presented by Kentucky Assistant Attorney General D. Brent Irvin within this Court on January 2, 2003 [see Irvin's "Appellees' Brief", page 18, line 10, through page 19, line 3] coupled with the fact that, in 1974, the Kentucky Legislature abolished the statute of limitations on **all felonies** - raising the horrifying prospect that at any future point which Kentucky's prison population drops below an acceptable level of profitability - all Kentucky will then need to do is to plant "hand-picked" judges on its Court of Appeals and/or Supreme Court to "change the rules", **as retroactively as It wishes**,

so that **any person who has ever lived in or ever visited the State of Kentucky** could then become a target for prosecution and imprisonment.

(b) Guarantees and immunities against "double jeopardy" or, **in the instant case**, "multiple jeopardy" as provided by the Fifth Amendment [see Akers' "FINAL BRIEF FOR PLAINTIFF-APPELLANT' at FN7, page 16];

(c) Fundamental preservation of the "right of trial by jury" as provided by the Seventh Amendment thereof [*id.*, pages 28 & 29]; &

(d) Guarantees of "due process of law" and "equal protection of the law" as provided by the Fourteenth Amendment thereof [*id.*, page 16];

4. Yet further, pursuant to 6 Cir. I.O.P. 40(a) at lines 5 through 9, it is hereby brought to the attention of the full Court that the panel erred in Its interpretation and/or findings with respect to the "**facts**" of the case at bar – **specifically including, but not limited to**:

(a) That Akers is "a Kentucky resident" [see "ORDER" entered on May 2, 2003, page 2, line 1] when, in fact, save the various periods within which Akers was fraudulently and/or otherwise unlawfully imprisoned within Kentucky between November of 1995 and July of 2000, Akers has not been a "Kentucky resident" since he lawfully migrated back to the State of Tennessee in September of 1994;

(b) That "venue was proper in Kentucky because the **substantial** part of the events giving rise to Akers' claims occurred in Lexington, Kentucky" [*id.*, page 3, ¶ 3, emphasis added]. **Venue was not proper in the transferee court** and, while a "substantial part" of the acts "giving rise" to Akers claims may have occurred in Lexington, Kentucky, the **prevailing acts** committed by the Defendants-Appellees, **and those invoking federal law**, i.e., "interstate blackmail", "interstate extortion", "interstate kidnaping", "fraudulent extradition",

"interstate mail fraud", "interstate wire fraud", "interstate conspiracy", "unlawful imprisonment" within Davidson County [Tennessee] Detention Center,

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and "interstate civil rights intimidation" all occurred in Davidson County and/or Williamson County, Tennessee. Absent those specific "prevailing acts", none of the subsequent "events" within Central Kentucky either would have, **or could have**, even been possible.

(c) That Akers' herein case is, in essence, an "appeal" or "collateral attack" of "state court conviction" - thereby invoking the *Rooker-Feldman* doctrine [***id.***, page 4, lines 6-10]. The instant Federal case **is not an "appeal" nor a "collateral attack"** of Akers' state court convictions but, rather, a proper attempt to obtain redress for the illicit manner in which those convictions were obtained - **as clearly provided for** by the First and Seventh Amendments to the United States Constitution **in conjunction with** Title 18 U.S.C. § 1964(c), Title 18 U.S.C. § 1965(b), Title 42 U.S.C. § 1983, & Title 42 U.S.C. § 1985(3) [see, e.g., Joint Appendix, Volume Two, pages 525-662 thereof]. The conduct of the named Defendants-Appellees, the judgement of the United States District Court for the Eastern District of Kentucky, and affirmation of that judgement by the three-judge panel of the Sixth Circuit Court of Appeals **are, however, a "collateral attack" - upon the Constitution and laws of the United States of America**. Surely, any Federal justice could recognize that if ever willing to look beyond the simple facts that Akers is: (i) **not an attorney**; (ii) **not a prisoner** "in custody"; (iii) **not proceeding *in forma pauperis*** herein; and (iv) is, in fact, **neither** a "wife-beater" **nor in any manner** a "criminal".

(d) That Akers' has, **in any way**, attempted to assert a common law tort for "malicious prosecution" pursuant to Kentucky law inasmuch as: (i) it is clear

Akers no more has a remedy under Kentucky law than the Commonwealth of Kentucky had personal and subject matter with respect to Akers' prosecutions [see, e.g., Akers' "FINAL BRIEF FOR PLAINTIFF-APPELLANT' at FN7, page 16]; & (ii) it is equally clear

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that Akers both clearly understands that concept and recognizes the implications thereof [see, e.g., Exhibit 02-6235-22, Joint Appendix, Volume 3 at page 861, ¶ 2(G)(ii)].

II - LEGAL ARGUMENT(S)

1. The panel has "AFFIRMED" the District Court's judgement "for the reasons stated by the court" [see "ORDER" entered on May 2, 2003, page 3, lines 1-2]. In other words, the panel concurs with the opinion of the District Court as follows:

DISCUSSION - Standard of Review

(a) First, **the court acknowledges that**:

(i) "*pro se* pleadings are held to less stringent standard than those drafted by attorneys" (citing ***Cruz v. Beto***, 405 U.S. 319(1972); ***Haines v. Kerner***, 404 U.S. 519 (1972)); (ii) that "[t]he allegations in a *pro se* complaint must be taken as true and construed in favor of the plaintiff" (citing ***Malone v. Colyer***, 710 F2d258,260(6th Cir. 1983)); but then asserts (iii) that "[e]ven taking all of Akers' allegations as true, as dictated by ***Malone v. Colyer***, ...based on numerous defenses and legal doctrines asserted by the defendants, Akers' complaint and accompanying materials are frivolous and fail to state a claim upon which relief can be granted." [***id.***, Exhibit 02-6235-05, Joint Appendix, Volume One, page 171].

(b) **The court further acknowledges that**:

(i) "Fed.R.Civ.P. 12(b) provides for the dismissal of claims and parties for seven listed reasons. A motion to dismiss under Fed.R.Civ.P. 12(b)(6) for failure to state a claim "**should not be granted unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief**"; (ii) "[w]ell-pled allegations must be taken as true and must be construed most favorably toward the non-movant. (citing ***Conley v.Gibson***, 335 U.S. 41, 45-46(1957); ***Scheuer v. Rhodes***, 416 U.S. 232,236 (1974); ***Rauch v. Day & Night Mfg. Corp.***, 576 F2d 697 (6th Cir. 1978); & ***Westlake v. Lucas***, 537, F.2d 857 (6th Cir. 1976), respectively); & (iii) that "[a] complaint should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6) only if there is no law to support the claims, if the alleged facts are insufficient to state a claim, or if on the face of the complaint there is an insurmountable bar to relief"; but then, **in contradiction of the specific language of those decisions**, (iv) "finds that Akers' claims are insufficient to state a claim on which relief can be granted and that his complaint should be dismissed with prejudice."

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(c) Obviously, Akers disputes that the district court has properly applied the required standard of review; **totally agrees** that the standards set forth in ***Cruz v. Beto, Haines v. Kerner, Malone v. Colyer, Conley v.Gibson, Scheuer v. Rhodes, Rauch v. Day & Night Mfg. Corp., & Westlake v. Lucas*** **clearly establish** the standard for review of Akers' herein case; and asserts that the specific language within those cases will speak for itself [see Akers' "FINAL BRIEF FOR PLAINTIFF-APPELLANT', "Argument VI", pages 25-28].

(d) With respect to the court's ridiculous assessment that "Akers' claims are insufficient to state a claim on which relief can be granted and...should be dismissed with prejudice", Akers asserts that, if that were true, then why is it that as of today – **more than two year after the filing of Akers' Complaint** – not

even a single Defendant has attempted to controvert even a single averment? **The real question is**: does the district court dispute the truth of Akers' allegations or whether TITLE 18 U.S.C. § 1964(c), TITLE 18 U.S.C. § 1965(b), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3) are valid and enforceable laws. Regardless of the District Court's intent, **again**, the specific language contained within ***Cruz v. Beto, Haines v. Kerner, Malone v. Colyer, Conley v.Gibson, Scheuer v. Rhodes, Rauch v. Day & Night Mfg. Corp., & Westlake v. Lucas*** will speak for itself.

DISMISSAL UNDER *HECK V. HUMPHREY*

(a) **The court surmises that**:

(i) "Reduced to its core, Akers' complaint...is an unambiguous attempt to collaterally attack his two state court criminal convictions and...'unlawful imprisonment'";

(ii) "These convictions have not been reversed or otherwise invalidated";

(iii) Akers is seeking $14 million in damages from the named defendants on the basis of unlawful imprisonment stemming from two state court convictions he alleges were obtained by fraud, jury tampering, extortion, blackmail and other specified illegal means";

(iv) "Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364 (1994), operates as a complete bar to Akers' claim. Heck v. Humphrey precludes the recovery of damages under...

...§ 1983 for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid";

(v) "Clearly, if Akers were to prevail on any one or all of his civil rights and/or RICO claims against any

one or all of the defendants named herein, an anomalous situation would exist whereby Akers could conceivably be recovering damages for actions associated with and resulting from allegedly unconstitutional convictions and imprisonment, while Akers' two state court criminal convictions contemporaneously remain intact, valid and undisturbed";

(vi) "This is precisely the type of inconsistent result which the United States Supreme Court ruled was prohibited in Heck"; &

(vii) "It is obvious from the attachments to Akers' 134-page complaint and 160-page memorandum of law that Akers views his complaint as a vehicle by which to relitigate, in full, every aspect of his two convictions and the prison terms he served as a result of his convictions".

(b) **Akers responds that**, although Akers considers any analogies between the case at bar and the case of ***Heck v. Humphrey***, 512 U.S. 477, 486-87 (1994) to border on the absolute asinine given the stark contrast in facts and circumstances, Akers does not object to the application of ***Heck*** herein **provided that the entire Supreme Court decision – including the opinions articulated by Justices SOUTER, BLACKMUN, STEVENS,** and **O'CONNOR** is properly considered [see, e.g., Exhibit 02-6235-22, Joint Appendix, Volume 3, pages 851-854]. Therefore, under the doctrine of that decision – **as a whole** – Akers is not subject to any of the criteria outlined by the District Court and as recapitulated within hereinabove ¶¶ (a)(i) through (vii).

"FAVORABLE TERMINATIONS" OF A PRIOR CRIMINAL PROCEEDING [AS] A PREREQUISITE OF A §1983 MALICIOUS PROSECUTION CLAIM

(a) **The District Court erroneously finds**:

(i) "Akers bases the instant § 1983, § 1985, and RICO conspiracy complaint on the fact that the Kentucky Court of Appeals reversed his assault and stalking

conviction in 1998 and in March, 2000, reversed his subsequent 1998 assault conviction"; &

(ii) Characterizes Akers' case as a "state tort claim for malicious prosecution" under Kentucky law;

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(b) **Akers responds that <u>it is precisely because of Kentucky law</u>** - or, at least, the selective, arbitrary, and capricious manner in which it is enforced - that Akers migrated back to Tennessee in September of 1994 and vowed to never return to Kentucky. Quite frankly, Akers could not care less about Kentucky law, will certainly never seek or expect any manner of justice under Kentucky law, and is neither subject to nor dependant upon Kentucky law [see, e.g., ***Rauch v. Day & Night Mfg. Corp.***, 576 F2d 697 (6th Cir. 1978), i.e.,

> "It is an elementary principle of jurisprudence that a court of justice cannot acquire jurisdiction over the person of one who has no residence within its territorial jurisdiction, except by {**8} actual service of notice within the jurisdiction upon him or upon someone authorized to accept service in his behalf, *or by his waiver, by general appearance or otherwise, of the want of due service.*" (see also, hereinabove ¶ I.4(d))]

<u>EFFECT OF THE JULY, 2000, GUILTY PLEA ON "FAVORABLE TERMINATION" REQUIREMENT</u>

(a) **<u>The district court asserts that</u>**:

"Akers' guilty plea, however, prevents him from collaterally attacking same in a subsequent civil suit. In <u>Duerr v. Kentucky & Indiana Bridge & R. Co.,</u> Ky., 116 S.W. 325 (1909), Duerr filed and action for malicious prosecution against the complaining witness after Duerr had pled guilty to a reduced felony charge. Much Like Akers, Duerr alleged: (1) that the complaining witness gave perjured testimony against him; (2) that there was a conspiracy among a group of individuals to deprive him of his liberty; and (3) that the only way to avoid a

felony charge was to plead to a lesser offense under duress and intimidation. In dismissing his malicious prosecution claim, the highest court in Kentucky opined as follows:

> But the appellant completely closed the door of the courts to his petition for redress when he admitted that he had pleaded guilty to a charge that was made unjustly, as he avers, against him. A person who comes into open court and admits on the record that he is guilty on the offense for which he is being prosecuted will not afterwards be heard to say the prosecution against him was procured by fraudulent methods. He will not be allowed to admit in the court that he was guilty, and in another to plead his innocence. His public admission of guilt in the criminal court was a complete and unanswered refutation of the charge that the prosecution against him was unfounded."

(b) In its FN10, **the District Court asserts that**:

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> "Akers submitted as Exhibit 'EEEE', in Volume II of his Appendix [page 634] a copy of the 'Judgement on Guilty Plea' which was entered of record in the Fayette Circuit Court on July 10, 2000. Notwithstanding his assertion that this plea was coerced, this court document clearly confirms that Akers' plea to 'assault under extreme emotion Disturbance was knowing and voluntary. The judgement states as follows:
>
> > "The court, finding that the Defendant understands the nature of the charges against him, that the Defendant understands the elements of the charges against him and the elements of any lesser included offenses and any defenses available to him at trial, that the Defendant's plea is voluntary, that the Defendant

knowingly and voluntarily waives his right to confrontation, and there is factual basis for the Defendant's plea..."

(c) **Akers responds that**: It must be understood, however, this "judgement" was entered by the very same Rebecca M. Overstreet who is named as a defendant in Akers instant Federal civil suit - under the clear and distinct threat from her and her co-conspirator, Lou A. Red Corn to the effect that without such a guilty plea, Akers would **for a third time** be tried for "First Degree Assault, would be held in the "hellish" Fayette County [Kentucky] Detention Center in lieu of an almost certainly insurmountable bonding requirement, and would almost certainly be **yet again** convicted of the outrageous charge of "First Degree Assault". Moreover, the record will reflect that Akers' entire "guilty plea" was the following statement:

Overstreet:	"What did you do?"
Akers:	"I slapped my wife and, **apparently**, caused her a neck injury." (emphasis added)

(d) **No responsible judge** would accept that statement as a guilty plea to **any felony offense**. And **no responsible prosecutor** would offer a defendant a plea bargain of Fourth Degree Assault (a misdemeanor punishable for a maximum of ninety days in jail and/or a fine of $250.00 under Kentucky law) [see, e.g., Exhibit 02-6235-11, Volume Two at page 662, ¶103] and, then, **three times** prosecute the defendant **for the very same act** as a First Degree Assault (a **Class B felony punishable for up twenty years** under Kentucky law).

(e) Yet further, the District Court has conveniently ignored the "doctrines" established by **North Carolina v. Pearce**, 89 S.Ct. 2089 (1969) [*id.*, FN4, page 484]; **Abbate v. United**

States, 359 U.S. S.Ct. 666, 672-673, 3 L.Ed.2d, 72 [*id.*, FN4, page 486]; **Menna v. New York**, 423 U.S. 61, 96 S.Ct. 241, 46 LEd(2d) 195 (1975) [*id.*, FN4, page 486]; **Abney v. United States**, 431 US 651, 97 S.Ct., 52 LEd(2d) 651 (1977) [*id.*, FN4, page 487]; & **Benton v. Maryland**, 89 S.Ct. 2056 (1969) [*id.*, FN134, page 658].

DISMISSAL UNDER *ROOKER-FELDMAN* DOCTRINE

(a) **The district court asserts that**:

(i) "This doctrine, 'a combination of the abstention and *res judicata* doctrines, stands for the proposition that a federal district court may not hear an appeal of a case already litigated in state court. A party raising a federal question must appeal a state court decision through the state system and then directly to the Supreme Court of the United States.' United States v. Owens, 54 F 3d. 271, 274 (5th Cir. 1995) (citing District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923)"; &

(ii) "The Rooker-Feldman doctrine clearly dictates that this court lacks the subject matter jurisdiction to entertain Akers' § 1983 and § 1985 claims, as well as the RICO claims, because they are a collateral attack on his two state court convictions."

(b) **Akers responds** by re-stating and reiterating his responses in hereinabove ¶ I.4(c).

ALTERNATIVE GROUNDS FOR DISMISSAL

Preclusive Effect of 1999 Civil Rights Order

(a) **The district court asserts that**:

(i) "The 1999 civil rights action [Case No. 5:99cv0173] stemmed from essentially the same set of facts and occurrences (through and including May 10, 1999) which form the basis of the instant complaint"; &

(ii) "While Akers has not proceeded in the instant

case in *forma pauperis* (IFP), case law governing IFP proceedings (which usually also involve *pro se* plaintiffs) is persuasive. Courts may appropriately dismiss IFP actions as frivolous when the action 'seek[s] to relitigate claims which allege substantially the same facts arising from a common series of...

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...events which have already been unsuccessfully litigated by the IFP plaintiff.' Wilson v. Lynaugh, 878 F.2d846, 850 (5th Cir. 1989); see also Curtis v. Boggs, 2001 WL 649735 (N.D. Tex.); Robertson v. Burger King Corp., 1994 WL 424431 (E.D.La)".

(b) **Akers responds that** apparently the district is just as ignorant (or pretends to be) with respect to the definition of "without prejudice" as is Kentucky Asst. Attorney General D. Brent Irvin [see, e.g., Exhibit 02-6235-18, Joint Appendix, Volume Three, FN8, page 787].

VARIOUS ALLEGED IMMUNITIES

(a) **The district court asserts that every single Defendant-Appellee** is shielded from civil liabilities in the instant case by either "judicial immunities", "quasi-judicial immunities", "witness immunities" and/or some other type of common law immunities.

(b) **They are not**, and that is made abundantly clear within Akers' "FINAL BRIEF FOR PLAINTIFF-APPELLANT', "Argument IV", pages 19 through 22, i.e., as follows:

Obviously, the District Court completely misconstrued the facts of the case – or, at least, the timing with respect to those facts – in that It has concluded that each and every one of the named Defendants is shielded from civil liability by either "judicial", "prosecutorial/quasi-judicial", or "witness"

immunities and, thus, accepts the Defendants' ridiculous propositions that, e.g.,

(i) By virtue of successful implementation and subsequent unlawful validation of **1993 conspiracies** in violation Title 42 U.S.C. § 1985, Defendants Miller, Witt, and "LFG Does 1 through 50" have somehow gained some sort of "immunities" [see "COUNT ONE", Akers' Complaint, Exhibit 02-6235-02, Joint Appendix, "COUNT ONE", page 110];

(ii) By virtue of their fraudulent testimony during fraudulent criminal trials of Akers in 1996 and 1998, Defendants Bishop, Fleming, Rushing, CBT Does 1 thru 40, Layne, Shannon, Vaughan, and Kelly acquired immunities for their **1994 conspiracies** in violation Title 42 U.S.C. § 1983 [*id.*, "COUNT(S) TWO thru FOUR", pages 111-113];

(iii) Defendants Bishop, Fleming, Rushing, Layne, Shannon, Kelly, SCC Does 1 thru 50, Witt, FCC Does 1 thru 30, Clark, and LFG Does 1 thru 60 have **all acquired immunities** for their **1994 "unlawful imprisonment"** of Akers [*id.*, "COUNT(S) FIVE, SIX, & SEVEN", pages 113-115] by virtue of fraudulent testimony of Bishop, Fleming, Rushing, Layne, and Shannon during fraudulent criminal trials of Akers in 1996 and 1998;

(iv) By virtue of their fraudulent testimony during fraudulent criminal trials of Akers in 1996 and 1998, Defendants Bishop, Fleming, Layne, Kelly, Rushing somehow acquired immunities for their **1994 predicate acts** in violation of Title 18 U.S.C. § 1961, ***et seq.***, ***viz***, "kidnaping", "unlawful imprisonment", "theft by unlawful taking (over $300.00)", "tampering with physical evidence", "wire fraud", "mail fraud", felonious "forgery", "theft by extortion", "blackmail", and

"extortion" [*id.*, "COUNT(S) FIFTEEN (a) thru (d), pages 120-124; SIXTEEN (a), pages 124-125; & EIGHTEEN (a), pages 127-128, respectively];

(v) By virtue of their fraudulent criminal convictions of Akers in 1996 and 1998, Defendants Red Corn and Overstreet acquired immunities for their **1995 predicate acts** in violation of Title 18 U.S.C. § 1961, ***et seq.***, ***viz***, "tampering with a witness" and "influencing a jury" [*id.*, "COUNT(S) NINETEEN (a) through (c), pages 128-131; & TWENTY (a), pages 131-133; & EIGHTEEN (a), pages 127-128, respectively]; &

(vi) Notwithstanding that their acts **could not, by any stretch of the imagination**, be considered "judicial", "quasi-judicial", **or in any other manner lawful**, the Defendants Red Corn, Overstreet, and Williams have immunities for their **1998 predicate acts** in violations of Title 18 U.S.C. § 1961, ***et seq.***, ***viz***, interstate "blackmail", interstate "extortion", and "civil rights intimidation" [*id.*, "COUNT TWENTY-ONE (a) thru (c), pages 133-135].

First, it is crucial to recognize that the history of "judicial immunities", "prosecutorial/quasi-judicial immunities", and "witness immunities" is demonstrative of the underlying purpose and intent of ensuring "good faith" within the legal process. In the instant case, however, the Defendants-Appellees have **intentionally misused and abused** the common law principles of "judicial immunities", "prosecutorial/quasi-judicial immunities", "witness immunities", and all other "absolute and/or qualified immunities" as illicit amendments to the United States Constitution and applied them for the self-serving, self-protecting, and self-perpetuating purposes of concealing **their own criminal acts**. Rather than effect the intended purpose of "good faith", they have been nothing more than licenses for these Defendants to "do as they well please" to perpetuate their individual and/or collective agendas – **with total and complete impunity and absolutely no accountability**.

Secondly, there are no constitutional, legislative, or statutory bases for such immunities – especially when, as in the

instant case, they are clearly at odds with specific provisions of the Constitution and duly-enacted Laws of the United States of America. Although it is clear that the Federal Courts have authority to implement policies with respect to the **due administration of justice, they do not have authority to sanction and/or pardon criminal acts** or, indeed, **any other act** in clear and distinct violation of the Constitution and Laws of the United States of America. **Not even the Chief Justice of the United States Supreme Court is lawfully immune to criminal or civil penalties** for such unlawful acts, **whether intrinsically or extraneously** associated with public office [see. e.g. ***McMillan v. Svetanoff***, 793 F.2d 149 (5th Cir. 1986), i.e., "Immunity is only granted when essential to protect the integrity of the judicial process"; "When the initiative...

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...and independence of the judiciary is not effectively impaired, the doctrine of judicial immunity does not apply"; "Judicial immunity should not be extended lightly or only because the actor is a judge. Before a judge is granted immunity, courts should examine the acts complained of to determine whether they are 'judicial'. If the acts do not involve the judicial process so that a fear exists that freedom of judicial decision-making may be stifled, the judge should not be free from suit". **See also**: ***Cleavinger v. Saxner***, 474 U.S. 193, 106 S. Ct. 496, 501, 88 L. Ed. 2d 507 (1985) (citing favorably Saxner v. Benson, 727 F.2d at 669, 674 n.2 (Cudahy, J., concurring)), i.e., "We must be equally hesitant in applying the doctrine to judges acting outside the traditional dispute resolution function"; ***Doe v. County of Lake, Indiana, et al***, 399 F. Supp. 553, i.e., "Despite its fundamental and efficacious purpose, the doctrine of judicial immunity is not absolute and unlimited; it does not immunize every state court judge in every lawsuit. On the contrary, application of the doctrine is restricted to its single objective: to protect judicial freedom in the delicate process of deciding civil and criminal matters on their merits. Where the initiative and independence of the judiciary will not be effectively impaired, courts have

refused to apply the doctrine [**6] of judicial immunity. For example, there is no official immunity from criminal liability; ***O'Shea v. Littleton,*** 414 U.S. 488, 503, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974), i.e., "The Supreme Court recognized long ago that a state court judge can be made to answer criminally for violating the criminal provisions of the Civil Rights Act. ***Ex parte Virginia,*** 100 U.S. 339, 25 L.Ed. 676 (1879). In addition, federal courts have held that application of the doctrine is restricted to the following areas: 1. immunity applies only when judges are faced with suits involving their judicial as opposed to ministerial or administrative duties, and 2. immunity applies only when officials are sued for damages"; & ***Eades v. Sterlinske,*** 810 F.2d 723 (7th Cir. 1986), i.e, "Judicial immunity is a creature solely of the common law. However, Congress did not abrogate the defense in enacting §§1 of the Civil Rights Act of 1871, 42 U.S.C.S. §§ 1983."]

Clearly, violators of Title 18 U.S.C. § 1961, ***et seq.***; Title 42 U.S.C. § 1983; and Title 42 U.S.C. § 1985 can not be permitted to escape liabilities by subsequently initiating **fraudulent criminal charges against their victim** and then fraudulently convicting him or testifying at his resulting trial.

III - CONCLUSION

It is quite a proper thing for the state and Federal courts to establish "common law" for the often necessary purposes of clarifying, implementing, enforcing, and/or resolving disputes with respect to the interpretation of, the Constitution and laws of the United States of America. It is quite another matter, however, for those courts to establish common laws which **clearly - if not blatantly - create conflict** with the Constitution and laws of the United States of America.

No court, nor **any justice of any court**, has the authority to override, undermine, and/or sanction violations of the Constitution and duly-enacted laws of the United States of America. Yet, that is precisely the results which the decisions of

the United States District Court for the Eastern District of Kentucky and three-judge panel of the Sixth Circuit Court of Appeals have yielded in this case. Those decisions **can not and shall not remain in effect** without challenge – **by every lawful means available to Akers**.

Akers has expended **extreme** time, effort, and resources in the proper presentation of the instant case. The Federal Courts can certainly continue to ignore and/or discredit Akers' pleadings if they so choose, but they should clearly understand, however, that **this overall matter shall – one way or another – at some time or another** – be properly presented to a fair and impartial jury for determination of the **real facts**, application of **proper law**, and meting out of **due justice**.

WHEREFORE, Plaintiff-Appellant, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, prays of this Court to "**GRANT**" Akers' herein request for hearing or rehearing en banc, whichever is appropriate under the unique circumstance of the instant case, together with all the relief provided by 6 Cir. R. 35(a), lines 4 through 7 thereof.

Respectfully submitted,

s/ James G. Akers
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CERTIFICATE OF SERVICE

COMES THE PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, and certifies that I have on this, the 5th day of June, 2003, served two (2) true and complete copies of the foregoing "AMENDED PETITION FOR EN BANC DETERMINATION" upon each opposing party, via "UNITED STATES MAIL-FIRST CLASS", postage pre-paid, and in that manner as follows:

(Listing of served Parties and/or their respective Counsel-of-Record are omitted from instant Petition for Writ of Certiorari for the purposes of economy & handling by Court. **See official record for listings.**)

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

[END OF DOCUMENT]

Case Number: 02-6235

IN THE

United States Court of Appeals for the Sixth Circuit

JAMES G. AKERS,

Plaintiff-Appellant,

v.

CAROLYN P. BISHOP, *et al,*

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Kentucky-Lexington Division

FINAL REPLY BRIEF FOR PLAINTIFF-APPELLANT

This document was prepared by:
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(d) CBT Does 1 - 40 [known only as a group of "persons" at Central Bank & Trust Company, Inc., Lexington, Kentucky]; (h) SCC Does 1 - 50 [known only as a group of "persons" at Southland Christian Church of Lexington, Inc., Nicholasville, Kentucky]; (l) FCS Does 1 - 30 [known only as a group of "persons" at the Fayette County (Kentucky) Sheriff's Office, Lexington, Kentucky]; (p) CAO Does 1 - 20 [known only as that group of "persons" at the Commonwealth's Attorney's Office for Kentucky's Twenty-second Judicial District, Lexington, Kentucky]; & (q) FCC Does 1 - 10 [known only as a group of individual "persons" at the Office of the Fayette (Kentucky) Circuit Court Clerk, Lexington, Kentucky] **as yet unidentified.**

---

[1] The Commonwealth of Kentucky **has not been named** as a party hereto.

[2] The L.F.U.C.G. was not originally named as a party hereto, but will be added due to voluntary entry herein.

INTRODUCTION

"**'Wrongfully imprisoned' wife beaters are not a protected class under § 1985.**" [D. Brent Irvin, Asst. Atty. Gen., Commonwealth of Kentucky, 01/07/2003]

That single statement, made by Kentucky Assistant Attorney D. Brent Irvin at page 31, lines 7 & 8 of his "APPELLEES' BRIEF" on behalf of Defendants-Appellees Thomas Clark, Rebecca Overstreet, Pamela Goodwine, Lou A. Red Corn, Todd Ferguson, & Cindy Schwartz [D.E. of 01/09/2003], **more than any other** made throughout the entirety of Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle Tennessee District-Nashville Division on November 21, 2000 [Case No 3:00cv1142 therein] and its underlying criminal actions within the Courts of Kentucky, epitomizes Kentucky's theories and attitudes toward "domestic violence". **In other words**, in Kentucky, once a man is **even so much as accused** of "domestic violence", he has automatically and instantaneously forfeited all rights, privileges, and immunities otherwise secured by the United States Constitution.

Akers has never suggested that his two (2) fraudulent imprisonments were cognizable under Title 42 U.S.C. § 1985 but, rather, that such were "overt acts" in the furtherance of those "chain conspiracies" detailed within Akers' "PETITION FOR WRIT OF CERTIORARI" filed and served on April 24, 2002 [Exhibit 02-6235-11, Joint Appendix, *viz*, "COUNT ONE" through "COUNT FOUR", pages 251 through 253 thereof; "COUNT TWELVE", pages 256 & 257 thereof; & "COUNT TWENTY-THREE, page 268 thereof]. The **conspiracies** are cognizable under Title 42 U.S.C. § 1985(3). All "overt acts" in the furtherance of those "conspiracies"/"chain conspiracies" are cognizable under Title 42 U.S.C. § 1983. Moreover, **both accused and even guilty**...

"wife beaters" are entitled to the **very same** (a) equal protection under the law; (b) guarantees against "double jeopardy", "abuse of process", and fraudulent imprisonment; & (c) rights to "due process" under the United States Constitution as are child molesters, rapists, murderers, and **even hooligan judges, prosecutors, and/or attorneys general of a state**. [see ***Cruz v. Beto***, 405 U.S. 319 (1972), i.e., "Federal courts sit not to supervise prisons, **but to enforce the constitutional rights of all 'persons'**, which include prisoners" (emphasis added)].

Each of the Defendants-Appellees have, at one time or another, complained about the "voluminous" nature of Akers' Complaint. Bennett E. Bayer, counsel for Defendant-Appellee Witt, even refers to it as "a devilish document to comprehend" [D.E. #6 of 01/21/2003, page 3, lines 1 & 2]. Notwithstanding, however, Bayer acknowledges that "[b]eginning at the bottom of page 19, Akers distills the entire complaint into a summary of the counts and the 'actors' who are subject to each count" [*id.*, page 10, ¶2, lines 1 & 2]. Bayer, as does all other counsel for the respective defendants-appellees, fails to acknowledge that those said counts specifically reference the factual allegations within preceding portions of the complaint **in great detail**, and specifically references corresponding portions of Akers' therewith and contemporaneously-filed "MEMORANDUM & MEMORANDUM OF LAW" - additionally referencing the specific Constitutional, Statutory, and Common Law provisions which have been violated. Bayer further acknowledges, in detail, at page 11, ¶ 3, of his brief, **the specific "Claim(s) for Relief"** against Witt.

Bayer's arguments, **like those of all other defense counsels**, simply "**do not compute**". Moreover, with all due respect, **it is this case which is "devilish"** and/or "**voluminous**". Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" and "MEMORANDUM & MEMORANDUM OF LAW" (hereinafter "Akers' Complaint") are merely reflective of that fact - **not a contribution to that fact**.

Just as the Defendants-Appellees have correctly pointed out, Akers' Complaint, as filed, is a total of 134-pages in length. However, it must be understood that there are at least sixteen (16) defendants who have been specifically named therein. Not even considering the verbiage which is specifically allocable to the potentially two hundred ten (210) Does who have yet to be identified due to foreclosure of discovery by the District Court, this equates to an average of only 8 3/8 pages per defendant. **By any recognizable standard**, this is not a daunting volume for any defendant to answer. Nonetheless, today (more than two years subsequent to service and filing), not even a single Defendant-Appellee has attempted to file an answer to Akers' Complaint and the reason is quite obvious. **Not even a single defendant can deny even a single averment** without subjecting themselves to yet further sanctions and/or penalties under Federal Law and their only options are to either: (a) "Admit" the factual allegations against them - triggering a "Summary Judgement" in favor of Akers; (b) claim "insufficient knowledge with respect to" those factual allegations - triggering either appropriate discovery or, in most instances, sanctions and/or criminal penalties under Federal Law; or (c) "Deny" the factual allegations against them - almost certainly triggering a Federal cause for "Obstruction of Justice". In short, the Defendants-Appellees are "between a rock and hard place" and their herein strategies of deploying all the confusion, delay, and "technicalities" they can muster are no more than a reflection of their untenable predicament.

In an attempt to have Akers' "BRIEF FOR APPELLANT", as timely served and filed on November 14, 2000, "STRICKEN", many of the Defendant-Appellees argued that Akers' had attempted to circumvent the limitations imposed by F.R.A.P. 32(a)(7)(C) by "incorporating by reference" some of his pleadings in the Courts below. Cited, ***inter alia***, was the case of ***DeSilva v. DiLeonardi***, 181 F.3d 865. However, the only proper application of that case herein is that, **just like the DeSilvas**, these Defendants-Appellees are " now are out of arguments" [*id.*, {*868}].

First, it is necessary to address the "APPELLEES' BRIEF" [D.E. of 01/09/03], filed and served January 7, 2003, by Kentucky Assistant Attorney General D. Brent Irvin, on behalf of Defendants-Appellees Thomas Clark, Rebecca Overstreet, Pamela Goodwine, Lou A. Red Corn, Todd Ferguson, and Cindy Schwartz, i.e., as follows:

> (a) Primarily because of the provisions of the Eleventh Amendment to the United States Constitution, **the Commonwealth of Kentucky has not been named** as a party to the within civil action. Otherwise, it would have been a "sitting duck" for liabilities in view of the role of its Governor, Attorney General, and both Fayette District & Circuit Courts in this overall matter;
>
> (b) Secondarily, **Akers has absolutely no intention or wish** to obtain monetary relief from the Kentucky state treasury. Not only would that be nearly impossible in view of controlling case law, but it would, as well, be unreasonable to hold those innocent taxpayers of the **entire state of Kentucky** accountable for the unlawful acts of corrupt officials within only two (2) counties, i.e., Fayette and Franklin. Akers seeks redress against only the individual "persons" named in his complaint – **not the entire Commonwealth of Kentucky**;
>
> (c) Akers has requested, **from the very outset of this case**, that the Kentucky Attorney General's office either tender an "express waiver of Eleventh Amendment immunities" or cease to file pleadings herein. Clearly, Irvin and those Defendants-Appellees he purports to represent should not be permitted to have "the best of both worlds" in protecting the Kentucky state treasury by asserting immunities pursuant to the Eleventh Amendment while, at the same time, expending those same funds in defense of Defendants who have committed criminal and/or otherwise unlawful acts in their individual private...

...capacities. [see, e.g., ***Collins v. Chandler Unified School Dist.***, C.A.9 (Ariz.) 1981, 644 F.2d 759, certiorari denied 102 S.Ct. 322, 454 U.S. 863, 70 L.Ed. 2d 163, i.e., "This section [42 U.S.C. § 1983] is broad and unequivocal and **must be liberally construed** to achieve congressional purpose of encouraging **compliance with and enforcement** of civil rights laws" (emphasis & clarification added); ***Dennis v. Chang***, C.A.9 (Hawaii) 1980, 611 F.2d 1302, i.e., "This section [42 U.S.C. § 1983] **must be liberally construed** to achieve **congressional purpose to encourage compliance with and enforcement of** civil rights laws"(emphasis & clarification added); ***Donaldson v. O'Connor***, N.D.Fla. 1978, 454 F.Supp. 311, i.e., "This section [42 U.S.C. § 1983] is to be construed to **fulfill congressional purpose of encouraging private litigation to enforce civil rights**" (emphasis & clarification added); & ***Johnson v. Summer***, N.D. Miss.1980, 488 F.Supp. 83, i.e., "This section [42 U.S.C. § 1983], providing for attorney fees in civil cases, **is to be broadly and liberally construed to achieve its intended purpose** to compensate counsel who represents prevailing litigants on civil rights claims and **to encourage individuals to seek judicial relief, particularly those who might not otherwise attempt to vindicate their rights**, and **this is particularly true where individual is faced with opposition from state, with entire resources of state government supporting litigation**" (emphasis & clarification added)];

(d) To whatever extent, as Irvin argues, that Akers "waived" any arguments, rights, and/or privileges within his "AMENDED BRIEF FOR APPELLANT" as served and filed December 5, 2003, and to which Akers would otherwise be lawfully entitled, **those same arguments, rights, and/or privileges are hereby renewed, re-asserted, and reiterated herein, in their entirety**; &

(e) Notwithstanding, however, lest this Honorable Court or any of the Defendants misconstrue Akers' objections and opposition to the filing of **any pleadings** in this case by Mr. Irvin as either a concession or acceptance of any validity thereof, Akers will discuss, ***infra***, some of the most egregious assertions by Mr. Irvin.

Secondly, it would seem only prudent to address the "letter" filed on behalf of Defendant-Appellee Carolyn P. Bishop (hereinafter "Bishop) on 12/13/03, i.e., as follows:

(a) Bishop has "chosen not to file an appellee's brief" - purportedly because she "chooses to rely on" the "sound and well reasoned" "opinion and order of District Judge Jennifer Coffman";

(b) It comes as no surprise that Bishop would do so, especially inasmuch as that "opinion and order" **virtually parallels** Bishop's "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS" as filed in United States District Court for the Eastern District of Kentucky on 09/17/02. To whatever extent that ***ex parte*** communication has occurred, Akers cannot say. **The similarities, however, are simply too striking to ignore**; &

(c) Akers has, nonetheless, **extensively** addressed all arguments presented by Bishop in her said "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS" in his "RESPONSE & OBJECTIONS TO: 'RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS'" as served and filed in United States District Court for the Eastern District of Kentucky [see Exhibit 02-6235-22, Joint Appendix at pages 832-873]. By virtue thereof, Akers has also addressed extensively the District Court's instant "JUDGEMENT" and accompanying "MEMORANDUM OPINION AND ORDER, DISMISSING" Akers' entire case.

COUNTER-STATEMENT OF THE CASE

Regardless of the amount of effort which the Defendants-Appellees are willing to expend and any credibility they may be able to falsely project by virtue of their sheer numbers, the within case revolves around those issues succinctly presented in Akers' "STATEMENT PURSUANT TO F.R.A.P. 28(a)(6) & (7)", "AMENDED BRIEF FOR APPELLANT", served on December 5, 2003.

The Defendants-Appellants appear to be of the belief that if enough of them present the **very same frivolous arguments - enough times - citing the very same misapprehended and/or inapplicable "authorities" in support** - that their arguments will **somehow, magically**, acquire some degree of merit. The following are but a few of their such arguments:

Kentucky Assistant Attorney General D. Brent Irvin asserts as follows:

> "After years of physically and mentally abusing his former wife, and enraged by resulting criminal convictions, the appellant James Akers, decided to abuse her yet again - and anyone else remotely connected to the criminal cases - by filing harassing, vindictive, and frivolous civil rights suits against them" [Irvin's "Appellees' Brief", D.E. of 01/09/03, page 2, ¶2, lines 1-4];

Defendant-Appellee Katherine H. Witt follows suit as follows:

> "Regardless of anything else involved in his complaint, it is essentially in response to a criminal complaint brought by his ex-wife, **for having assaulted and stalked the woman for years**."(Brief of Appellee Katherine Witt, D.E. #6 of 01/21/2003, page 2, ¶ 3, lines 2 - 4, emphasis added)];

Defendant-Appellee Doris Fleming furthers as follows:

> "In 1994, Bishop sought an emergency protective order from the Appellant in the Fayette District Court in the Commonwealth of Kentucky resulting from Appellant's threats and domestic problems between Appellant and Bishop" [D.E. #1 of 01/17/2003, page 2, ¶ 2, lines 1 - 3]. "Appellant continued to harass Bishop and he was eventually indicted for assaulting and stalking Bishop" [*id.*, page 2, ¶ 2, line3 - page 3, lines 1 & 2].

The simple truth is that, except for fraudulent testimony of Defendant-Appellee Bishop, who has obviously either become a pathological liar or has been sufficiently "brain-washed" by her...

...herein co-Defendants-Appellees to the point that she no longer recognizes the truth, **there is no evidence whatsoever** to support such outrageous conclusions; there are no medical records or law enforcement agency records to support such conclusions; **and** the testimony of even **Bishop's very own sons** contradicted any such conclusions. Moreover, Bishop has already admitted that she and her "accessories" violated Kentucky's own K.R.S. 514.030 by removing and destroying physical evidence which would have conclusively shown her testimony to be fraudulent.

As if destruction of Akers' marriage, family, home, and two (2) successful businesses – **all for no purpose other than to secure and perpetuate their own ambitions** – were not enough, these Defendants-Appellees find it necessary to continue to drag Akers' name and reputation "through the mud", clearly because they refuse to accept responsibilities for **their own acts**.

COUNTER-STATEMENT OF FACTS

The facts underlying the within case are as set forth, in detail, within Akers Complaint and as recapitulated at pages 8-12 of Akers' "AMENDED BRIEF FOR APPELLANT" filed herein on December 5, 2003. Again, **not <u>even a single</u>** Defendant-Appellee has attempted to controvert **<u>even a single</u> averment** as contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)"[3] inasmuch as as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes and the...

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[3] <u>Once again</u>, Defendant Carolyn P. Bishop has essentially admitted having committed the predicate acts of "theft by unlawful taking or disposition (over $300.00)" & "tampering with physical evidence", both being felonies under Kentucky Law and, therefore, violations of Title 18 U.S.C. § 1964(c); Defendant Jerry L. Kelly has essentially admitted having committed the predicate act of "forgery in the second degree", a felony under Kentucky Law and, therefore, a violation of Title 18 U.S.C. § 1964(c) if coupled with an additional such "predicate act"; and Defendants Pamela Miller & Katherine Witt have essentially admitted the fundamental elements of "conspiracy", in violation of Title 42 U.S.C. § 1985(2) & (3). [See Akers' allegations with respect thereto within Akers' Complaint, Exhibit 02-6235, Joint Appendix at ¶¶142(c) & (d), 144(a), & 128, respectively]

Defendants-Appellees **<u>cannot deny the factual allegations against them</u>** without subjecting themselves to still further sanctions and/or penalties under Federal Law. **The <u>merits of Akers's herein case</u> just, simply, <u>can not be challenged</u>.**

<u>Defendant Doris Fleming fraudulently alleges</u>:

(a) "Many if the Defendants (including Doris Fleming...) were named in Appellant's 1999 civil rights action" [D.E. #1 of 01/17/2003, page 4, ¶ 2, lines 1 & 2]. "Doris Fleming was a witness on behalf of Appellant's

ex-wife in the underlying divorce/domestic abuse action. Essentially, Appellant named Ms. Fleming as a party to this action because she was an unfavorable witness against his interests in the divorce/domestic abuse case" [*id.*, page 4, ¶ 2, lines 5 - 9];

(b) "Akers bases his claims on the 2000 Kentucky Court of Appeals decision reversing his assault conviction" [*id.*, page 4, ¶ 3, lines 2 - 4]. "That same court decision affirmed the 1998 stalking conviction rendered by the same proceeding" [*id.*, page 4, ¶ 3, lines 4 - 5]; &

(c) "All individuals who testified against Akers in the Fayette Circuit Court actions ...have been named as Defendants/Appellees and Akers alleges that those individuals acted as conspirators to violate his civil rights" [*id.*, page 5, ¶ 3, lines 1 - 3].

(A) Doris Fleming **was not named** as a defendant in Case No. 5:99cv0173 and, even had she been, that case was dismissed "**without prejudice**" pursuant only to the Prison Litigation Reform Act and that would have had **no bearing whatsoever**, upon the instant case. Moreover, Doris Fleming was **not a witness at a single one** of Akers' "divorce/domestic violence" proceedings, nor is she a "party to this action because she was an unfavorable witness" to any such action. The simple truth is that Defendant-Appellee Doris Fleming is so named in the instant case **for no reason other than those delineated** within Akers' Complaint and Memorandum;

(B) Akers neither bases his herein claims "on the 2000 Kentucky Court of Appeals decision reversing his assault conviction", **nor does he need to** [see, e.g., Akers' "AMENDED BRIEF FOR APPELLANT", entered herein on 12/17/02, at FN7, page 16 thereof, i.e., as follows:

> "The underlying 'criminal' cases originate from a series of events leading to what, **at its worst**, could be legally construed as nothing more than a misdemeanor 'assault under extreme emotional disturbance' [see. e.g., Case No. 5:02cv0162, D.E. #29, ¶ 7(b) & FN7...

...thereto] i.e., '**Even under Kentucky law (particularly K.R.S. 508.040)**, Akers' so-called act of 'assault' of Bishop was punishable for only **a maximum fine of $250 and/or 90-day sentence in the county jail** [see 'OFFENSE, PENALTY AND BAIL SCHEDULE', APPENDIX A, Kentucky Rules of Court, 1995, West Publishing Company, November 1, 1994] absent unconstitutional ***'ex post facto'* enhancement** under the disguise of implementing, evolutionizing, and/or 'testing the mettle' of Kentucky's newly-enacted/ enhanced 'Domestic Violence & Abuse' laws and, **only then, if proceedings had been initiated within the one (1) year statutory period required by K.R.S. 500.050(2)**." [see also, e.g., Akers' "Motion for Reconsideration", as filed in the Sixth Circuit of Appeals on December 10, 2001, FN8, page 12 thereof]. Moreover, **there can be absolutely no question** that Akers had been – **at least twice – already fully-punished** for the events of May 4th and/or 5th, 1994 [see, e.g., ¶¶E-34 with FN44 thereto, E-37, E-38 with FN49 thru FN53 thereto, E-51 with FN81 thereto, and E-81 with FN76 thru FN82 thereto of Akers' Memorandum, Exhibit 02-6235-11, Joint Appendix at pages 538-593, ¶¶E-34 w/FN44 thereto, E-37, E-38 w/FN49 thru FN53 thereto, E-51 w/FN81 thereto, & E-81 w/FN76 thru FN82 thereto]. Not even considering the elements of malice, abuse of process, and fraud, ***inter alia***, Akers' convictions for **any charge** related to May 4th/5th, 1994, **was barred** by either the statute of limitations **and/or** the Fifth Amendment to the U.S. Constitution. **Clearly, there was no actionable 'criminal' basis for any manner of 'assault'** charges against Akers and therefore, **there could have been no jurisdiction**."

See also: ***North Carolina v. Pearce***, 89 S.Ct. 2089 (1969), i.e., "[727]...The theory of double jeopardy is that a person need run the gantlet only once. The gantlet is the **risk of range of punishment** which the State...imposes for that particular conduct. He risks the **maximum permissible punishment when first tried**. **That risk having been faced once** need not be faced again. **And the fact that he takes an appeal does not waive his**

constitutional defense of former jeopardy to a second prosecution. ***Green v. United States***, 355 U.S. 184, 191-193, 78 U.S.Ct. 221, 225, 227, 2 L.Ed. 2d 199. ...It is argued that this case is different because there were two different crimes with different punishments for each one. That, however, is a matter of semantics. 'It is immaterial to the basic purpose of the constitutional provision against double jeopardy whether the Legislature divides a crime into different degrees carrying different punishments, or [728] allows the court or jury to fix different punishments for the same crime'. ***People v. Henderson***, 60 Cal. 2d 482, 497, 35 Rptr. 77, 86, 386 P.2d 677, 686 (1963) (Traynor, J.) ...'It was established at an early date that the Fifth Amendment was designed to prevent an accused from [729] **running the risk of 'double punishment'**. ***United States v. Ewell***, 383 U.S. 116, 124, 86 S.Ct. 773, 778, 15 L.Ed.2d 627. When Madison introduced to the First Congress his draft of what became the Double Jeopardy Clause, it read: 'No person shall be subject, except in cases of impeachment, to *more than one punishment* or one trial for the same offense * * * (Emphasis supplied) 1 Annals of Cong. [434]. ...'By forbidding that no person shall be subject for the same offense to be twice put in jeopardy of life or limb, [the safeguard of the Fifth Amendment against double punishment] guarded against the repetition of history by * * * punishing [a man] for an offense when he had already suffered the punishment for it.' ***Roberts v. United States***, 320 U.S. 264, 276, 64 S.Ct. 113, 119, 88 L.Ed. 41, (Frankfurter, J., dissenting). 'The inquiry, then, is into the meaning of 'double' or 'multiple' punishment. In ***Ex parte Lange***, 18 Wall. 163, 21 L.Ed. 872, the petitioner...[730]...had **already suffered**...

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...**complete punishment for his crime and could not be subjected to further sanction**: 'If there is anything settled in the jurisprudence of England and America, it is that **no man can be twice lawfully punished for the same offence**.' And though there have been some nice questions in the application of this rule to cases in which the act charged was such as to come

within the definition of more than one statutory offence, there has never been any doubt of its entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offence.' *Id.* at 168. ...It was not until ***United States v. Benz***, 282 U.S. 304, 51 S.Ct. 113, 75 L.Ed. 354, that the Court clarified its position. ...'The general rule is that judgements, decrees and orders are within the control of the court during the term in which they were made. * * * The rule is not confined to civil cases, but applies to criminal [731] cases as well, *provided that the punishment not be augmented*, ***Ex parte Lange***, 18 Wall. 163, 167-174, 21 L.Ed. 872 [additional citations omitted]. In the present case the power of the court was exercised to mitigate the punishment, not to increase it, and thus brought within the limitation. * * * ...[733] The ban on double jeopardy has its deep roots in the history of occidental jurisprudence. 'Fear and abhorrence of government power to try people twice for the **same conduct** is one of the oldest ideas found in western civilization.' ***Bartkus v. Illinois***, 359 U.S. 121, 151-155, 79 S.Ct. 676, 3 L.Ed.2d 684 (Black, J., dissenting). And its purposes are several. **It prevents the State from using the criminal process as an instrument of harassment to wear the accused out** by a multitude of cases with accumulated trials. ***Abbate v. United States***, 359 U.S. S.Ct. 666, 672-673, 3 L.Ed.2d, 72. ...The vice [735] of this procedure lies in relitagating the **same evidence** before two different juries with a man's innocence or guilt at stake. ...**Harrasment of an accused by successive prosecutions**...so as to afford the prosecution a more favorable opportunity to convict are examples when jeopardy attaches. ***Downum v. United States***, 372 U.S. 734, 736, 83 S.Ct. 1033, 1034, 10 L.Ed.2d 100. ...'**This case presents an instance of the prosecution being allowed to harrass the accused with repeated trials and convictions on the same evidence**, until it achieves its desired result...' ***Ciucci v. Illinois***, 356 U.S. 571, 573, 78 S.Ct. 839, 840, 2 L.Ed.2d 983. ...Manifestly it is not the danger of jeopardy of being a second time found guilty. It is the **punishment** that would legally follow the second conviction which is the real danger guarded against by the Constitution. ...It is doubtless true that the State has an interest in adjusting sentences upward [737] when it discovers new

evidence warranting that result. But **the individual has an interest in remaining free of double punishment**. And in weighing those interests against one another, **the Constitution has decided the matter in favor of the individual**. See ***United States v. Tateo***, 377 U.S. 463, 475, 84 S.Ct. 1587, 1594, 12 L.Ed.2d, 448" [see, Akers' Memorandum, pages 484-487, FN4, emphasis added]; **and**

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Menna v. New York, 423 U.S. 61, 96 S.Ct. 241, 46 LEd(2d) 195 (1975), i.e., "Where the State is precluded by the United States Constitution from haling a defendant into court on a charge, **federal law requires that conviction to be set aside even if the conviction was entered pursuant to a counseled plea of guilty**" [*id.*, emphasis added];

Abney v. United States, 431 US 651, 97 SCt, 52 LEd(2d) 651 (1977), i.e., "Double jeopardy clause protects an individual against more than being subjected to double punishments; **it is a guarantee against being twice put to trial for the same offense**. U.S.C.A. Const. Amend. 5" [*id.*, emphasis added]; **and**

Fourteenth Amendment, United States Constitution [Akers' Memorandum at pages 10 & 11], i.e., "**No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ...nor deny any person within its jurisdiction equal protection of the laws.**" [*id.*, emphasis added]

Further, it is immaterial whether that "same court decision affirmed the 1998 stalking conviction" [**see** Akers' "AMENDED BRIEF FOR APPELLANT", entered herein on 12/17/02, at FN7, page 16 thereof, i.e., as follows:

> "Akers' conviction 'First-Degree Stalking' is **even more easily defeated**, i.e., (1) there were no charges whatsoever against Akers at the time he migrated back to Tennessee on September 23, 1994 [Akers' Memorandum, Exhibit 02-6235-11, Joint Appendix at

pages 565 & 566, ¶E-51 with FN63]; (2) thereafter, Akers did not voluntarily return **to <u>any</u> jurisdiction within Kentucky** and there is no allegation to the contrary [*id.* at pages 566 & 567, ¶¶E-54 with FN65]; (3) Akers never made **<u>even a single threat</u> of 'serious physical injury or death' to Bishop <u>or anyone else</u>** - only 'threats' of a civil law suit - **<u>while within the State of Tennessee</u>** [*id.* at pages 567-580, ¶¶ E-56 thru E-64 with FN66 thru FN69 thereto, FN72, & FN75]; (4) Akers' acts were lawful within the State of Tennessee [*id.*, pages 572-573, ¶E-60 with FN69 thereto]; (5) **Akers acts <u>were not cognizable</u> under Kentucky Law** [*id.*, pages 511-512, 'K.R.S. 500.060 Territorial applicability' with FN32 thereto; & (6) **<u>in essence</u>, Akers was convicted for violating a 'protective order' <u>with which he had not been served</u> and was <u>not even aware of</u>**, in **<u>clear</u> violation of the Fourteenth Amendment to the U.S. Constitution** [*id.*, page 574-575, ¶¶ E-65 & E-66 w/FN70 thereto]. **<u>Clearly</u>, there was no <u>actionable</u> 'criminal' basis for <u>any manner</u> of 'stalking'** charges against Akers and therefore, **<u>there could have been no jurisdiction</u>**." **<u>See also</u>**: ***U.S. v. Casciano***, 927 F.Supp. 54 N.D.N.Y. 1996, i.e., "11. ...**For purposes of crossing a state line** with intent **to engage in conduct in violation of protective order, if court issuing order has failed to obtain personal jurisdiction** over defendant by service of process, **then order was invalid and <u>prosecution cannot survive</u>**. 18 U.S.C.A. § 2262(A)(1); 12. Due process clause requires that notice be reasonably calculated, **under all circumstances**, to apprise interested parties of penalty of an action and afford them an opportunity to present their objections. **U.S.C.A. Const. Amend. 5**." (emphasis added); & "**<u>Due process of law" defined</u>** , *id.*, page 484].

(C) **<u>Not</u> "<u>all individuals</u> who testified against Akers** in the Fayette Circuit Court actions ...have been named as Defendants/Appellees" herein - **<u>only those who have violated the Federal Laws</u>** as detailed within Akers' Complaint and Memorandum. Bishop's brother (Wendell Patrick), sister-in-law

(Mildred Patrick), co-workers at Central Bank (Jeff Jacobs & Sheila Parks, etc.), and **even Bishop's own mentor** during the divorce (Jane Preston), even though adversarial to Akers,...

...attempted to be truthful – at least insofar as permitted by Defendants-Appellees Overstreet and Red Corn. Akers has no evidence that would indicate that any of these witnesses were, **in any way**, involved in those unlawful acts detailed within Akers Complaint and Memorandum.

Kentucky Assistant Attorney General D. Brent Irvin erroneously surmises:

> (a) "Evidently fearing that the federal judges in Kentucky would be familiar with his prior history of filing frivolous civil rights and habeas corpus cases, Akers tried his luck in a different court" [Irvin's "Appellees' Brief", D.E. of 01/09/03, pp 7, ¶ 2, lines 1-3];
>
> (b) "The thrust of Akers complaint is the same as before; that his former wife (**the crime victim**) Bishop..." [***id.***, page 7, ¶ 3, lines 1 & 2, emph. added]; &
>
> (c) "Although Akers admits striking his wife, Akers contends that the resulting domestic relations assault and stalking charges were a type of extortion designed to secure his former wife a greater share of the marital property. ...**He alleges his own divorce attorney and Bishop's divorce attorney engaged in "racketeering"** by performing legal services on behalf of their clients" [***id.***, page 8, lines 10-17, emph. added]

(A) Akers had no fear that "the federal judges in Kentucky would be familiar with his prior history of filing [allegedly] frivolous civil rights and habeas corpus cases". Nor did Akers resort to "tr[ying] his luck in a different court". Akers considers Irvin's allegation of "forum shopping" to be just as offensive – **if not just as libelous** – as Irvin's characterization of

Akers as a "wife beater". The simple truth is that: (1) if not for the fact that Akers had been essentially kidnaped from the State of Tennessee by Kentucky authorities and fraudulently imprisoned within Kentucky, this case would have been filed in United States District Court for the Middle District of Tennessee **long before May of 1999**. Irvin's argument only discloses his ignorance of the manner in which mail is forwarded and received by a Kentucky prisoner - **both being essential considerations** in the initiation and maintenance of **any** legal action.

(B) Irvin and many of his colleagues are obviously "hell bent" on characterizing **Bishop as the "victim" of Akers** - obviously because that premise invokes all **the "political" aspects** of "domestic violence" in lieu of the "legal" aspects - **a strategy which has worked wonders**...

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...**for them in the Kentucky Court of Appeals and U.S. District Courts**. Nevertheless, the facts of this case make it crystal clear that just the opposite is true, i.e.,

> "The defendants...allege **Bishop to be the 'victim' of Akers** [4] ...and propound their 'paraphrased' version of Judge Wilhoit's 'MEMORANDUM OPINION AND ORDER' in which they 'gloss over' Judge Wilhoit's findings that, in essence, Akers did 'not clearly set forth the jurisdictional basis' and that the Court was without jurisdiction until such time as Akers' convictions had been 'declared invalid'. Both deficiencies have subsequently been remedied [see Akers' Complaint (generally) and Akers Memorandum at ¶ 119, page 169, together with FN134]. Inasmuch as the Defendants Witt, Layne, and Vaughan assert essentially the same arguments in their motions and memorandums [Docket Entry #42 at ¶ 3; Docket Entry # 43 at [Argument] VII; & Docket Entry # 35 at ¶ B], Akers' 'response' is the

same." [see, e.g., Exhibit 02-6235-113 (Memorandum), Joint Appendix, page 692]

Defendants-Appellees Layne, Shannon, & Kelly fraudulently assert:

> "Akers based all claims on his disagreement with his convictions in Kentucky state court for stalking and assault" [Layne's & Shannon's "Brief for Appellees", D.E. of 01/13/2003, page 1, ¶4, lines 3 & 4. **See also**, Kelly's "Brief for Appellee", D.E. of 12/18/2002, Page 1, ¶4, lines 3 & 4].

The Constitution and Laws of the United States Constitution also "disagree" with Akers' said convictions and, more particularly, with the manner in which they were obtained, i.e., abuse of process, want of equal protection under the law, want of due process, lack of jurisdiction, fraud, and obstruction of justice, ***inter alia***.

ARGUMENTS

[See Akers' "AMENDED BRIEF FOR APPELLANT", entered herein on 12/17/02]

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[4] "It is a matter of opinion **who has been "victimized" by whom**. Ultimately, that issue may be one that only a **fair and impartial jury**, in a **fair and impartial courtroom setting**, and **presided over by a fair and impartial Judge** can decide and is, indeed, an issue inextricably intertwined with the relief Akers seeks in this civil action. **Perhaps Bishop has been "victimized"** in the matters raised in the Kentucky Courts. **The real question, however, is by whom** – by Akers, by herself, or by her co-defendants in this case? On the other hand, **there can be no question whatsoever whether Akers has been "victimized"** [see Akers' Complaint and Memorandum (generally)] **or by whom**." [see, e.g., "EXHIBIT 02-6235-13", Joint Appendix at pages 692-693, ¶2(D)(i) & (ii)].

CONCLUSION

The herein Defendants-Appellees jointly praise the District Court's "JUDGEMENT" and accompanying "MEMORANDUM OPINION AND ORDER, DISMISSING" as "thorough and well-reasoned" and, indeed, it was **thoroughly wrong**. Whether the same was "well-reasoned" depends upon whether one's objective is that of "substantial justice" or "obstruction of justice".

With all due consideration of the foregoing, there should be little wonder why it is that, in modern day America, so many innocent men are imprisoned – if not awaiting execution on "death row" – while the "guilty" remain free. America's criminal justice system is in dire need of a major overhaul, and the within case has proven to be as good to start with as any likely to be found.

This Honorable United States Court of Appeals for the Sixth Circuit is asked to do no more and no less than each of Its justices are sworn to do, i.e., to "preserve and protect the Constitution and Laws of the United States of America".

WHEREFORE, Plaintiff-Appellant, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, again asks and prays of this Honorable Court to "**GRANT**" all the relief prayed for in his "AMENDED BRIEF FOR APPELLANT", entered herein on 12/17/02.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843
Facsimile: 615/831-9307

CERTIFICATION OF COMPLIANCE

PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, hereby certifies that the foregoing "FINAL REPLY BRIEF FOR PLAINTIFF-APPELLANT" fully complies with F.R.A.P. 32(a)(7)(B)(ii) inasmuch as, according to the "WORD PERFECT 9" program used, the said "FINAL REPLY BRIEF FOR PLAINTIFF- APPELLANT" contains **exactly** 30,151 characters; **5,580 words**; 210 sentences; **465 lines**; 75 paragraphs; & **15 pages** (**excluding** those items listed in 6 Cir. R. 28(b) and/or Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure).

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843
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RENEWED REQUEST FOR ORAL ARGUMENTS

The Defendants-Appellees have filed "Briefs" herein which total 214-pages according to Court records. It would be all but impossible to address them all within the limitations imposed upon this "FINAL REPLY BRIEF FOR PLAINTIFF-APPELLANT" by F.R.A.P. 32(a)(7)(B)(ii).

Akers believes that, within his "FINAL BRIEF FOR PLAINTIFF-APPELLANT" entered herein on 12/17/02 and hereinabove "FINAL REPLY BRIEF FOR PLAINTIFF-APPELLANT", all significant issues presented by the District Court and Defendants-Appellees have been adequately addressed. Akers further believes that he has provided this Honorable Court with **compelling arguments** in support of remand.

If, however, the Court finds any remaining contentions of the District Court and/or any of the Defendants-Appellees to be conclusively meritorious, Akers must respectfully request that "oral arguments" be granted pursuant to F.R.A.P. 34(a)(2) **and** 6 Cir. R. 34(a), in order that his "due process rights" to be heard will be properly respected.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
Post Office Box 3648
Brentwood, Tennessee 37024
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Facsimile: 615/831-9307

FINAL DESIGNATION OF APPENDIX CONTENTS

PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654 **in conjunction with** 6 Cir. R. 28(d) and/or 6 Cir. R. 30(b), hereby files and serves as an addendum to the foregoing "FINAL BRIEF FOR APPELLANT" designation of the parts of the record included in the "Joint Appendix" as follows:

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s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
Post Office Box 3648
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Telephone: 615/834-2843
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CERTIFICATE OF SERVICE

COMES THE PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, and certifies that I have on this, the 28th day of February, 2003, served two (2) true copies of the foregoing "FINAL REPLY BRIEF FOR PLAINTIFF-APPELLANT" upon respective lead counsel for each and every named Defendant-Appellee, via "UNITED STATES MAIL-FIRST CLASS", postage pre-paid, and in that manner as follows:

(Listing of served Parties and/or their respective Counsel-of-Record are omitted from instant Petition for Writ of Certiorari for the purposes of economy & handling by Court. **See official record for listings.**)

s/ James G. Akers
JAMES G. AKERS, ***Plaintiff-Appellant***
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

[END OF DOCUMENT]

Case Number: 02-6235

IN THE

United States Court of Appeals for the Sixth Circuit

JAMES G. AKERS,

Plaintiff-Appellant,

v.

CAROLYN P. BISHOP, *et al,*

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Kentucky-Lexington Division

FINAL BRIEF FOR PLAINTIFF-APPELLANT

This document was prepared by:
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(d) CBT Does 1 through 40 [known only as a group of "persons" at Central Bank & Trust Company, Inc., Lexington, Kentucky]; (h) SCC Does 1 through 50 [known only as that group of "persons" at Southland Christian Church of Lexington, Inc., Nicholasville, Kentucky]; (l) FCS Does 1 through 30 [known only as a group of "persons" at the Fayette County (Kentucky) Sheriff's Office, Lexington, Kentucky]; (p) CAO Does 1 through 20 [known only as that group of "persons" at the Commonwealth's Attorney's Office for Kentucky's Twenty-second Judicial District, Lexington, Kentucky]; & (q) FCC Does 1 through 10 [known only as a group of individual "persons" at the Office of the Fayette (Kentucky) Circuit Court Clerk, Lexington, Kentucky] all as yet unidentified due to foreclosure of discovery by the District Court.

---

[1] The Commonwealth of Kentucky **has not been named as a party hereto**.

STATEMENT OF JURISDICTION (GENERALLY)

The civil case from which the within action arises involves violations of Federal Law – some originating within Kentucky and resulting in violations within Tennessee and, conversely, some originating within Tennessee and resulting in violations within Kentucky. **Neither** the State **nor** Federal Courts within the states of Tennessee **or** Kentucky have **both** personal jurisdiction over all the parties **and** subject matter jurisdiction over all the issues. Therefore, the Federal Courts have exclusive jurisdiction pursuant to the specific provisions of TITLE 18 U.S.C. § 1964(c), TITLE 18 U.S.C. § 1965(b), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3)

STATEMENT OF JURISDICTION (U. S. DISTRICT COURT)

The United States District Court for the Middle Tennessee District-Nashville Division, had both jurisdiction and venue to hear and adjudicate the herein civil action, and to consider all matters with respect thereto, pursuant to the specific provisions of TITLE 18 U.S.C. § 1964(c); TITLE 18 U.S.C. § 1965(b); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3), respectively.

The facts establishing venue for the case within the United States District for the Middle Tennessee District-Nashville Division include, **but are not limited to**, factual allegations that the herein Defendants-Appellees, while within the Commonwealth of Kentucky, committed the criminal acts of interstate extortion, interstate blackmail, interstate kidnaping and/or fraudulent extradition, further interstate extortion, further interstate blackmail, and interstate civil rights intimidation, all of which originated within Kentucky and resulted in the commission of those specific criminal acts against the Plaintiff-Appellant, James G. Akers, while said James G. Akers was a lawful resident of and, at all times relevant thereto, remained within the State of Tennessee. Those said "criminal

acts" and additional "overt acts" in the furtherance and concealment thereof are (1) as detailed...

-1-

...within Akers' Complaint; (2) clearly rise to the level of R.I.C.O. violations and Civil Rights violations/conspiracies in clear and distinct violation of the provisions of Title 18 U.S.C. § 1964(c); Title 42 U.S.C. § 1983; and Title 42 U.S.C. § 1985(3), respectively; and (3) have resulted in those injuries to said James G. Akers in his person, property, and businesses, **all of which** are situated within the Federal District of Middle Tennessee, at Nashville.

STATEMENT OF JURISDICTION (U. S. COURT OF APPEALS)

United States Court of Appeals for the Sixth Circuit had jurisdiction to hear and adjudicate Akers' appeal docketed on October 16, 2001, as Case No. 01-6243 therein , and to consider all matters with respect thereto, pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure **in conjunction with** the "Collateral Order Doctrine" as set forth in, e.g., ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980), citing ***Cohen v. Beneficial Loan Corp.***, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949) **and** **TITLE 28 U.S.C. § 1292(a)(1)**, but disclaimed Its jurisdiction pursuant to the legal theorems set out in ***SongByrd v. Estate of Grossman***, 253 F.2d 680, 683 (2nd Cir.), *cert. denied* 531 U.S. 824 (2000); ***Lemon v. Druffel***, 253 F.2d 680, 683 (6th Cir. 1958); ***F.D.I.C. v. McGlamery***, 74 F.3d 218, 222 (10th Cir. 1996); & ***Middlebrooks v. Smith***, 735 F.2d 431, 432 (11th Cir. 1984), on January 24, 2002.

This United States Court of Appeals for the Sixth Circuit now, once again, has jurisdiction to hear and adjudicate Akers' appeal docketed as Case No. 02-6235 therein on October 17, 2002, and to consider all matters with respect thereto, pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure. **Additionally**, Akers has properly preserved the issue as to

whether this Honorable Court had jurisdiction with respect to Akers' previous appeal, docketed as Case No. 01-6243 herein on October 16, 2001, pursuant to the "Collateral Order Doctrine".

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STATEMENT PURSUANT TO F.R.A.P. 28(a)(4)(C) & (D)

On November 21, 2000, the Plaintiff-Appellant, James G. Akers (hereinafter "Akers"), **without counsel** in strict accordance with Title 28 U.S.C. § 1654, filed his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" in United States District Court for the Middle Tennessee District-Nashville Division [Joint Appendix, Volume One, Exhibit 02-6235-02, page 15 thereof] together with Akers' contemporaneous "MEMORANDUM & MEMORANDUM OF LAW" [*id.*, Volume Two, Exhibit 02-6235-11, page 195] and contemporaneous "APPENDIX/RELEVANT EXHIBITS" [Case No. 3:00cv1142, D.E. #3, Volumes 1 & 2] in support thereof (herein "Akers Complaint"; "Akers' Memorandum"; & "Akers' Appendix", respectively). Jurisdiction was asserted pursuant to the provisions of the Federal Statutes themselves; and venue was asserted on the basis that "the prevailing acts" as alleged in Akers' Complaint had occurred within the Federal District of Middle Tennessee. "Diversity of citizenship" of the parties was, **at most**, a secondary consideration.

The factual allegations within Akers' Complaint, when coupled with those applicable Constitutional, Statutory, and Common Laws of the United States of America and "authorities" in support thereof as cited in Akers' Memorandum, will speak for themselves. **Not even a single Defendant has attempted to controvert even a single averment** and, in fact, **they can not do so without placing themselves in peril of yet further sanctions and/or penalties** under Federal Law. **The "merits" of Akers' herein case are not even disputable**.

On September 18, 2001, the Honorable Robert L. Echols,

Chief Judge, U. S. District for the Middle Tennessee District-Nashville Division, entered his "ORDER" and accompanying "MEMORANDUM" [Joint Appendix, Volume One, Exhibit 02-6235-03, page 149] **denying** the...

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...Defendants' various "Motion[s] to Dismiss" **but granting** transfer of the case to U.S. District Court, Eastern District of Kentucky.

It being apparent that the District Court either: (1) did not read Akers' pleadings in that Court; (2) did not understand Akers' pleadings in that Court; (3) did not afford due credibility to Akers' pleadings in that Court; (4) accepted the Defendants'-Appellees' fraudulent renditions of the facts with respect thereto; **or** (5) based Its ruling upon a combination of "all the above", Akers served and filed his **first** "Notice of Appeal" on September 21, 2001, and paid the requisite filing fees on that same date. The case was then docketed as Case No. 01-6243 in the Sixth Circuit Court of Appeals on October 16, 2001.

Notwithstanding "Motion(s) to Dismiss" the appeal for lack of jurisdiction to consider what they termed an "interlocutory appeal" as filed on behalf of Defendants-Appellees Jerry L. Kelly [Case No. 01-6243, D.E. of 10/24/01]; Carolyn P. Bishop [***id.***, D.E. of 10/31/01]; Pamela R. Goodwine, Todd D. Ferguson, Cindy G. Schwartz, Rebecca M. Overstreet, Lou A. Red Corn, and Thomas D. Clark [***id.***, D.E. of 11/13/01]; Katherine H. Witt [***id.***, D.E. of 10/07/01]; & Doris Fleming [***id.***, D.E. of 11/09/01]; and Akers timely "Responses and/or Objections" thereto [***id.***, D.E. of 11/01/01; D.E. of 11/09/01; D.E. of 11/13/01; D.E. of 11/28/01; & D.E. of 11/28/01, respectively], Akers timely served and filed his "Brief for Appellant" [see Joint Appendix, Volume Two, Exhibit 02-6235-11, page 335] on November 12, 2001, in which he argued that:

I - VENUE PROPERLY [RESTED] WITH UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE DISTRICT, AT NASHVILLE;

II - "ORDER" TRANSFERRING VENUE FOR CASE TO EASTERN DISTRICT OF KENTUCKY [WAS] "COLLATERAL TO MERITS" OF THE CASE;

III - TRANSFER OF [THE] CASE TO UNITED STATES DISTRICT COURT FOR [THE] EASTERN DISTRICT OF KENTUCKY [WOULD] RESULT IN IRREPARABLE DAMAGE TO AKERS;

-4-

IV - ISSUES RESPECTING TRANSFER OF CASE TO THE EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, [WERE] "TOO IMPORTANT" TO "BE DEFERRED UNTIL THE WHOLE CASE IS ADJUDICATED"; &

V - THE "ENDS OF JUSTICE" REQUIRE[D] VENUE TO REMAIN IN UNITED STATES DISTRICT COURT FOR THE MIDDLE TENNESSEE DISTRICT-NASHVILLE DIVISION.

In support of his contentions, Akers cited: F.R.A.P. Rules 4 & 28(a); Title 28 U.S.C. § 1654; Title 28 U.S.C. § 1292(a)(1); Title 18 U.S.C. § 1964(c); Title 18 U.S.C. § 1965(b); Title 42 U.S.C. § 1983; Title 42 U.S.C. § 1985(3); Title 42 U.S.C. § 1988(a); ***Abney v. United States***, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977); ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980); ***Clemence v. Clemence***, 8 Kan.App.2d 377, 658 P.2d 368 (1983); ***Cohen v. Beneficial Loan Corp.***, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); ***Collins v. Chandler Unified School Dist.***, C.A.9 (Ariz.) 1981, 644 F.2d 759; ***Cooper v. Molko, D.C.Cal.***, 512 FR.Supp. 563 (1981); ***Dennis v. Chang***, C.A.9 (Hawaii), 1980, 611 F.2d 1302; ***Donaldson v. O'Connor***, N.D.Fla. 1978, 454 F.Supp. 311; ***Firestone Tire & Rubber Co. v. Risjord***, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981); ***Johnson v. Summer***, N.D.Miss.1980, 488 F.Supp. 83; ***Jones v. Bales***, D.C.Ga. 58 F.R.D. 453, affirmed 480 F.3d (1972); & ***PT United Can Co. v.***

Crown Cork & Seal Co.,138 F.3d 65, 71-72 (2d Cir. 1998), ***inter alia***.

Applying the legal theorems set out in ***SongByrd v. Estate of Grossman***, 253 F.2d 680, 683 (2nd Cir.), *cert. denied* 531 U.S. 824 (2000); ***Lemon v. Druffel***, 253 F.2d 680, 683 (6th Cir. 1958); ***F.D.I.C. v. McGlamery***, 74 F.3d 218, 222 (10th Cir. 1996); & ***Middlebrooks v. Smith***, 735 F.2d 431, 432 (11th Cir. 1984), on January 24, 2002, this Sixth Circuit Court of Appeals **rejected** Akers' arguments pursuant to the "Collateral Order Doctrine" as set forth in, e.g., ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980), citing ***Cohen v. Beneficial Loan Corp.***, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949) and disclaimed Its jurisdiction to hear...

...and adjudicate Akers' then appeal, and to consider all matters with respect thereto, **notwithstanding the specific language set out within Title 28 U.S.C. § 1292(a)(1)**. [Case No. 01-6243, 01/24/02]. On February 13, 2002, Akers then filed his "Petition for Stay of Mandate" [Joint Appendix, Volume Two, Exhibit 02-6235-11, page 280] pending the filing and disposition of Akers planned "Petition for Writ of Certiorari" with the United States Supreme Court [***id.***, page 240] and that petition was, as well, rejected by this Court on February 21, 2001 [Case No. 01-6243, 02/21/02].

Pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with the "Collateral Order Doctrine" as set out in, e.g., **Cohen v. Beneficial Loan Corp.**, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949), in which the United States Supreme Court held that "...**certain orders were immediately appealable** (1) if they were collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until whole case is adjudicated", on April 24, 2002, Akers timely served and filed his "Petition for Writ of Certiorari" with the United States Supreme Court seeking reversal of this Honorable Court's

dismissal of Akers' appeal.

On June 24, 2002, Akers' said "Petition for Writ of Certiorari" was "**DENIED**" by the United States Supreme Court for no stated reasons and, then, on April 4, 2002, the case was re-docketed as Case No. 5:02cv0162 within United States District Court for the Eastern District of Kentucky-Lexington Division, and assigned to District Judge Jennifer B. Coffman.

Following a lengthy repetition of those same arguments in support of their respective "Motion(s) to Dismiss" and/or "Motion(s) to Stay Discovery" [Case No. 5:02cv0162, D.E. Nos. 2, 3, 6, 11, 14, 15, 19, 20, 23, & 40] and Akers' timely "Responses and/or Objections" and/or 'Motion(s) to Strike" with respect thereto [Case No. 5:02cv0162, D.E. Nos. 4, 5, 7, 14, (response to D.E. #11, not entered due to error by Clerk), 28, 29, 32, 33, & 43, respectively] as had been filed...

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...in United States District Court for the Middle District of Tennessee-Nashville Division [Case No. 3:00cv1142 therein], on September 25, 2002, United States District Judge Jennifer B. Coffman entered her "FINAL AND APPEALABLE" "JUDGEMENT" **dismissing, with prejudice, the entire action, including what she perceived to be any and all pendant state claims**, and accompanying contemporaneous "MEMORANDUM OPINION AND ORDER, DISMISSING" [Joint Appendix, Volume One, Exhibit 02-6235-04, page 157].[2]

As a matter of right, on October 3, 2002, Akers served and filed his "NOTICE OF APPEAL to UNITED STATES COURT OF APPEALS for the SIXTH CIRCUIT" [*id.*, Volume Two, Exhibit 02-6235-05, page 236] and payed the requisite "filing fees" and "docketing fees" therewith pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure.

Following complaints from the various opposing counsel that Akers' previous "BRIEF FOR APPELLANT" timely-filed on November 14, 2002, was in substantial non-compliance with Rules 28 and/or 32 of the Federal Rules of Appellate Procedure, on December 5, 2002, Akers then filed and served his

"AMENDED BRIEF FOR APPELLANT" and contemporaneous "MOTION FOR LEAVE TO FILE AMENDED BRIEF FOR APPELLANT PURSUANT TO 6 CIR. R. 27(a)" pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with previously-asserted arguments with respect to the "Collateral Order Doctrine" set out in **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**.[3]

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[2] See particularly relevant excerpts therefrom as quoted within "ARGUMENT V", ***infra***, page 23 & 24 hereof.

[3] **See also**: **Firestone Tire & Rubber Co. v. Risjord**, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981), i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, the order...is appealable under § 1291 only if it falls within the *Cohen* doctrine."; & **Abney v. United States**, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977), Akers Memorandum at FN4, i.e., "Of course, Cohen's collateral-order exception is equally applicable in both civil and criminal proceedings."

STATEMENT PURSUANT TO F.R.A.P. 28(a)(5)

[See 'TABLE OF CONTENTS", "Argument(s) I thru VIII", ***supra***, page (i) hereof]

STATEMENT PURSUANT TO F.R.A.P. 28(a)(6) & (7)

The following are edited excerpts[4] from Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [Case No. 3:00cv1142] as filed on November 21, 2000, in United States District Court for the Middle Tennessee District-Nashville Division:

"On August 25, 1993, just two (2) months

preceding the twenty-fifth (25th) anniversary of his marriage to Defendant Carolyn P. Bishop (nee Carolyn J. Patrick, then Carolyn P. Akers, now Carolyn P. Bishop, and referred to hereinafter as "Bishop"), the Plaintiff, James G. Akers (hereinafter 'Akers') was awarded a sizeable cash settlement on behalf of Coleman/Akers & Akers, Incorporated (hereinafter 'C/AA'), a Kentucky corporation owned and operated by Akers and based in the Lexington, Kentucky, area. The series of outrageous events which have transpired thereafter, and as set forth hereinafter in detail, have been such that should shock the very conscience of any responsible citizen of a free and democratic society in the modern world.

In a manner strikingly similar to historical accounts of colonial Salem, Massachusetts; 'Nazi' Germany; and 'cold war era' Soviet Bloc countries, Defendant Bishop and her hereinafter named co-conspirators devised, effectuated, and perpetuated schemes to unlawfully seize, withhold, divert, and convert the property of Akers with intent to deprive him thereof; to unlawfully circumvent and/or abridge all of Akers' inalienable and lawful rights pursuant to, ***inter alia***, **Article I-§§ 9 & 10, Article III-§2, Article IV-§2,** and the **First, Fourth, Fifth, Sixth, Eighth, Thirteenth,** and **Fourteenth Amendments** of/to the **United** States **Constitution** and, in both overt and covert concealment of those said schemes, to oppressively deprive Akers of his liberty in such a manner as is hereinafter set forth in detail. Those said schemes and actions of and/or by the named herein Defendants **have not been limited** to 'civil rights violations' under 'color of state law', 'color of office', and/or 'malicious prosecution' but extend, in fact, to **criminal acts** in blatant and direct violation of the Federal Laws as hereinafter enumerated.

As will be hereinafter shown, in detail, the Plaintiff Akers was: (a) **assaulted, decoyed, inveigled, and robbed** in May and June of 1994 and, in the covert concealment thereof, was; (b) **unlawfully imprisoned** in May and July of 1994 and, in covert concealment thereof;

(c) **blackmailed and/or extorted** from July of 1994 thru March of 1995, and in further concealment thereof; (d) **essentially 'kidnapped' and fraudulently**...

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[4] Edited **for clerical errors only** and for formatting required for compliance with F.R.A.P. 32(a)(7)(C).

...**held** in Nashville, Tennessee, during August and September, 1995, and, in the covert concealment thereof; (e) **fraudulently extradited** back to Kentucky in October of 1995 and, in the **further concealment** of the hereinbefore schemes; (f) **fraudulently and maliciously accused, prosecuted, convicted, and then imprisoned** in custody of the Fayette County [Kentucky] Sheriff and/or Kentucky Department of Corrections from May 22, 1996, until April 15, 1998, when; (g) Akers was released from custody on a $52,000 Full Cash Bond pursuant to an 'Opinion and Order', as rendered February 27, 1998, by the Kentucky Court of Appeals, which ruled that Akers' convictions and resulting imprisonment had been unlawfully achieved.

In the further concealment of those said schemes of/by the Defendants, and as an **intentional and continuing course of conduct** by them, Akers was: (a) **further blackmailed/ extorted** in March of 1998; was (b) **further** oppressively imprisoned in April of 1998; was (c) **further blackmailed and/or extorted** from April through October of 1998, and then; (d) **yet again, oppressively and unlawfully prosecuted, convicted, and then imprisoned** for the **very same unconstitutional and fraudulent felony charges**, pursuant to the **very same unconstitutional and fraudulent indictment**, as was the case in May of 1996.

Following Akers' additional unlawful, oppressive, and unconstitutional imprisonment since October 28, 1998, the Court of Appeals of Kentucky rendered Its **second** "Opinion" on May 19, 2000, in

which It **reversed** (in part) Akers' convictions **for the second time** and ruling, in hereunto relevant part, as follows:

> '**It is clear** that the trial court failed to follow our instructions on remand;
>
> 'The court heard arguments as to the admissibility of the evidence. Prior to making its ruling, the court acknowledged that it **had not read our decision**';
>
> '**Without reading our decision, the court could not have followed our directives**';
>
> 'While our opinion did not specifically so require, **the trial court should have granted Akers separate trials** on each count';
>
> 'By not holding separate trials, **the trial court abused its discretion and denied Akers a fair trial**...';
>
> '**Fairness and justice require us to reverse his (Akers) conviction**...' (emphasis added)

Akers is not an attorney, and does not have any formal training or education in the Law. Having been forced to expend **vast resources** in defense of the hereinafter enumerated unlawful acts committed by the named Defendants, and ancillary expenses related thereto, Akers can no longer afford, nor will he seek, further assistance and/or counsel of attorneys with respect to the matters set forth herein."[Joint Appendix, Volume One, Exhibit 02-6235-02, pages 16-19, emphasis added]

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As this Honorable Court can readily determine from the hereinabove, the within case is extensive. It involves at least sixteen (16) Defendants-Appellees named in only their individual private capacities as "persons" as defined within Title 18 U.S.C. §§2 & 1961(3), and Title 42 U.S.C. §§ 1983 & 1985; four (4) "enterprises" as defined within Title 18 U.S.C. § 1961(4), i.e.,

"Southland Christian Church of Lexington, Inc.", the "Association-in-fact", "Dr. John J. Vaughan, M.D.", & "Ernest W. Williams, Attorney-at-law"; and potentially two hundred ten (210) "Does" who have yet to be either quantified or identified due to foreclosure of discovery by the District Court. **The case does not, as the District Court alleges**, name "Central Bank & Trust Co., Lexington, Kentucky", "the Fayette County Circuit Court", or "the Fayette County, KY Sheriff's Office" as **either** "defendants" **or** "enterprises".

Summarily, the factual allegations against these Defendants-Appellees include, ***inter alia***, charges that, beginning in about mid-July, 1993, and continuing through July 7, 2000:

> (a) The named Defendants-Appellees engaged in various "conspiracies" and/or "chain conspiracies" in violation of TITLE 42 U.S.C. § 1985 [Joint Appendix, Volume One, Exhibit 02-6235-02, ***viz***, "COUNT ONE" through "COUNT FOUR", pages 110-113; "COUNT TWELVE", pages 118-119; & "COUNT TWENTY-THREE, pages 136-137] **and, in furtherance and concealment thereof**;
>
> (b) The named Defendants-Appellees committed numerous specific "overt acts" in violation of TITLE 42 U.S.C. § 1983 [***id.***, ***viz***, "COUNT[S] FIVE through ELEVEN", pages 113-118; "COUNT(S) THIRTEEN & FOURTEEN", pages 119-120; & "COUNT(S) TWENTY-TWO & TWENTY-THREE", pages 135-137] **and, in the course thereof**;
>
> (c) The named Defendants-Respondents committed numerous predicate acts in violation of TITLE 18 U.S.C. § 1961, ***et seq.***, as are **all** detailed within Akers' Complaint...

> ...and Memorandum in support [***id.***, ***viz***, "COUNT(S) FIFTEEN through TWENTY-ONE", pages 120-135 thereof, for enumerations].[5]

Notwithstanding the specific requirements set forth in F.R.C.P. 12((a)(4)(A), only a single Defendant-Appellee, Carolyn P. Bishop, has filed what could **even conceivably be considered an "Answer" to Akers' Complaint** following the denial of their respective and clearly frivolous "MOTION(S) TO DISMISS" as filed in either United States District Court for the Middle District of Tennessee-Nashville Division [Case No. 3:00cv1142] **and as renewed** in United States District Court for the Eastern District of Kentucky-Lexington Division [Case No. 5:02cv0162 therein]. Moreover, except for Defendant Vaughan's denial that "he was a party to any alleged conspiracy [or] engaged in any unlawful conduct" [see USDC-MTD Case No. 3:00cv1142, D.E. #51 at ¶ II(B)(1), page 2, lines 6 & 7];[6] Defendant Kelly's denial that he has had any contact with Akers since September 23, 1994 [*id.*, D.E. #76, page 2, lines 8 & 9];[6] & Defendant Bishop's denial of "the substantive allegations against her with the exception of any items which appear of public record" [USDC-KYED Case No. 5:02cv0162, D.E. #2 at ¶3],[6] **not even a single** Defendant-

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[5] If the Court would be so inclined, Akers would respectfully ask that It review those specific averments giving rise to these summary allegations as contained within ¶¶12 through 127 of Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" in United States District Court for the Middle Tennessee District-Nashville Division [Joint Appendix, Volume One, pages 34-109] together with parallel ¶¶12 thru 127 and all footnotes thereto, respectively, of Akers' therewith and contemporaneous "MEMORANDUM & MEMORANDUM OF LAW" [*id.*, Volume Two, Exhibit 02-6235-11, page 195].

[6] Even so, the remaining factual allegations are clearly sufficient to sustain a "Summary Judgement" against these Defendants-Appellees – **notwithstanding the fraudulent misrepresentations contained within their said pleadings**. [see USDC-TNMD Case No. 3:00cv1142, D.E. #68, D.E. #69, & D.E. #78, respectively]. Moreover, Defendant Carolyn P. Bishop has essentially admitted having committed the predicate acts of "theft by unlawful taking or disposition (over $300.00)" & "tampering with physical evidence", both being felonies under Kentucky Law and, therefore, violations of Title 18 U.S.C. § 1964(c); Defendant Jerry L. Kelly has essentially admitted having committed the predicate act of "forgery in the second degree", a felony under Kentucky Law and, therefore, a violation of Title 18 U.S.C. § 1964(c) if coupled with an additional such "predicate act"; and Defendants Pamela Miller & Katherine Witt have essentially admitted the fundamental elements of

"conspiracy", in violation of Title 42 U.S.C. § 1985(2) & (3). [See Akers' allegations with respect thereto within Akers' Complaint, Joint Appendix, Exhibit 02-0635-02, ¶¶ 142(c) & (d), 144(a), & 128, respectively]

Appellee has attempted to controvert **even a single averment** as contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" inasmuch as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes and the Defendants-Appellees **cannot deny the factual allegations against them** without subjecting themselves to still further sanctions and/or penalties under Federal Law. **The merits of Akers's herein case just, simply, can not be challenged**.

Notwithstanding the hereinabove, however, on September 25, 2002, District Judge Jennifer B. Coffman, Eastern District of Kentucky-Lexington, entered her "**JUDGEMENT**" **dismissing** Akers' Complaint - **in its entirety** - with respect to **every conceivable defendant and every conceivable** "**enterprise**" - **in every conceivable jurisdiction** - "**with prejudice**", and accompanied by her contemporaneous **thirty-four (34) page "MEMORANDUM OPINION AND ORDER, DISMISSING"** in which she cites **eighty-five (85) purported "authorities" in support of her ruling**.

Again, as a matter of right, this appeal follows that "**JUDGEMENT**" and accompanying **"MEMORANDUM OPINION AND ORDER, DISMISSING"** pursuant to F.R.A.P. Rules 4 & 28(a) **together with** Akers previous arguments pursuant to the "Collateral Order Doctrine" **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**, in which the United States Supreme Court held that "...**certain orders were immediately appealable** (1) if they were **collateral to the merits**; (2) if **denial of an immediate appeal would result in irreparable damage to the party seeking review**; and (3) if the issue raised was "**too important**" to "**be deferred until the whole case is adjudicated**" (emphasis added). *Accord*, **Firestone Tire & Rubber Co. v. Risjord**, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981).

ARGUMENTS

ARGUMENT I: THE "ENDS OF JUSTICE" REQUIRE RE-TRANSFER OF VENUE BACK TO UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE DISTRICT-NASHVILLE DIVISION

This Honorable Court is hereby asked to take judicial notice of the entire contents of Akers' "ARGUMENT(S) I, III, & V", Akers' "FINAL BRIEF FOR APPELLANT" [see Joint Appendix, Volume Two, pages 370-378]; appended "EXHIBIT CA6-10" to Akers' "PETITION FOR STAY OF MANDATE" entered this Court on February 13, 2001 (Case No. 02-6243 herein); and as contained within Akers' "Petition for Writ of Certiorari" entered with the United States Supreme Court on April 24, 2002. In essence, Akers' arguments therein include, **but are not limited to**, contentions that:

> The list of "lay witnesses" required by Akers' at trial of this case will include residents of four (4) separate and distinct Federal Districts within Kentucky; two (2) separate and distinct Federal Districts within Tennessee; and two (2) separate and distinct Federal Districts within Indiana. All "expert witnesses" required by Akers at trial are residents of the Federal District of Middle Tennessee. Fearing reprisal by the herein Defendants-Appellees as does Akers, all "lay witnesses" who are residents of Kentucky and Indiana have made it clear that they prefer to testify in the Federal District of Middle Tennessee, at Nashville, and arrange for travel and/or per diem costs at their own expense. The yet undetermined number of lay witnesses who are residents of Middle Tennessee, and the only witnesses who can provide proof as to the "whereabouts" and "demeanor" of Akers during the time period

encompassing his fraudulent "First Degree Stalking" conviction, cannot be required to travel in excess of one hundred (100) miles from the venue and it would be unfeasible for the U. S. District Court for the Eastern District of Kentucky to compel their appearance in Lexington, Kentucky. All nine (9) of Akers' expert witnesses are residents of, and maintain offices in, Middle Tennessee. Akers just, simply, no longer has the resources to compensate those expert witnesses for travel time, travel expense, and per diem expenses required for testimony in U. S. District Court for the Eastern District of Kentucky at Lexington and **there are no expert witnesses** within Central Kentucky who can competently testify with respect to the issues raised in Akers' claims. Moreover, **every witness conceivably required by the herein Defendants-Appellees have already testified with respect to every conceivable matter** in Akers' numerous trials and/or hearings within Fayette [Kentucky] District & Circuit Courts. All such testimony is mechanically-recorded on audiotapes and/or videotapes and can be utilized by the Defendants-Appellees, to whatever extent relevant and admissible, pursuant to Rule 804 of the Federal Rules of Evidence. **Akers has no such luxury**.

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This Honorable Court is asked to consider the following likely scenario in the event the "ORDER" of transfer issued by United States District Court for the Middle District of Tennessee is allowed to stand: (a) Akers', who is not an attorney and can no longer afford an attorney after having all his resources depleted in defense of the fraudulent charges in Kentucky and subsequent incarceration within Kentucky, is compelled to re-enter the jurisdiction of the Defendants-Appellees for filings, depositions, pre-trial hearings, and, ultimately, for trial; (b) The Defendants-Appellees,

realizing that they are in a "no win" situation, file additional fraudulent charges against Akers pursuant to the outstanding, **albeit unconstitutional**, "Domestic Violence Order" as detailed in ¶ 118 of Akers' Complaint; corresponding ¶ E-118, Akers' Memorandum; & hereinabove "COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP" [reference omitted]; (c) Akers is then, **yet again, unlawfully imprisoned** within Kentucky for "God only knows" how long; (d) Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" is then, subsequently, "DISMISSED FOR FAILURE TO PROSECUTE"; & (e) The Defendants-Appellees escape liability and exposure of corruption.

The herein Defendants-Appellees have committed equally-dastardly acts in May through July of 1994; October through December of 1995; and May of 1994 through July of 2000, and **not even the Federal Courts can guarantee that the Defendants will not do so again** in order to prevent this case from going forward – thereby avoiding exposure of the corruption within their ranks.

Truly, **the "ends of justice" require** venue for Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" to remain in the United States District Court for the Middle District of Tennessee at Nashville.

"The Kentucky Defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the Defendants, thereby subjecting him to "more of the same" oppression and tyranny which gave rise to Akers' claims herein and to facilitate additional violations of Title 18 U.S.C. § 1961, ***et seq.***, and Title 42 U.S.C. §§ 1983 & 1985 by those Defendants [see, e.g., D.E. #78 at ¶ 2(B)(I)(iii), page 5; & D.E. #75 at ¶ 1(A)(iv), page 18]"

Yet further, while Akers was reluctant to suggest it at the time, it is clear from the District Court's "**JUDGEMENT**" and accompanying "**MEMORANDUM OPINION AND ORDER, DISMISSING**" as entered on September 25, 2002, by District Judge Jennifer B. Coffman, Eastern District of Kentucky-Lexington Division, that **it will be virtually impossible** for Akers to receive a **fair adjudication** of the within case **in any Court situated in Central Kentucky** and, perhaps, **even in the entire Commonwealth of Kentucky**.

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ARGUMENT II: **DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ABUSED ITS DISCRETION BY DENYING AKERS' "DEMAND FOR JUDGEMENT BY DEFAULT" & "MOTION FOR PARTIAL SUMMARY JUDGEMENT"**

"Notwithstanding the specific requirements set forth in F.R.C.P. 12((a) (4)(A), only a single Defendant-Respondent, Carolyn P. Bishop, has filed what could **even conceivably** be considered an "Answer" to Akers' Complaint following denial of their respective and clearly frivolous "MOTION(S) TO DISMISS" as filed in United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000 [Civil Action No. 3:00cv1142].

...**not even a single Defendant-Respondent** has attempted to controvert **even a single averment** as contained within Akers' 'CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)' inasmuch as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes. The Defendants-Respondents **cannot deny the factualallegations against them** without subjecting themselves to still further sanctions and/or penalties under Federal Law **and** providing both Akers and the Federal Courts more than sufficient

admissions to both enter and sustain a 'JUDGEMENT ON THE PLEADINGS'.

3. Inasmuch as the Defendants-Respondents **have not presented, nor can they present, any meritorious defenses, whatsoever, to Akers' herein claims**, it is in the best interest of the American public-at-large and judicial economy would best be served if Akers' herein 'CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)'...is now and forthwith lawfully concluded without further exhaustive litigation at the taxpayers' expense. **There is no just cause for further delay** of the redress Akers seeks herein pursuant to TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3) in conjunction with the First Amendment to the United States Constitution, and no further 'Memorandum of Law' is either warranted or necessary." [Exhibit 02-6235-15, ¶¶2 & 3, Joint Appendix, pages 747-748]

Clearly, Akers was entitled to "Judgement by Default" against Defendants Doris Fleming, Allen I. Rushing, John J. Vaughan, Pamela Miller, and Ernest W. Williams pursuant to F.R.C.P. 12(a)(1)(A), F.R.C.P. 54(c), together with F.R.C.P. 55(a) & (b)(2); **and** "Partial Summary Judgement" against the remaining identified Defendants Todd M. Layne, Donald Shannon, Jerry L. Kelly, Thomas L. Clark, Katherine H. Witt, Lou A. Red Corn, Rebecca M. Overstreet, Cindy G. Schwartz, Todd D. Ferguson, & Pamela R. Goodwine pursuant to F.R.C.P. 8(b) & (d), F.R.C.P. 52(c), together with F.R.C.P. 56(a) & (d).

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ARGUMENT III: DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ERRED BY APPLYING *HECK V. HUMPHREY* AND *ROOKER-FELDMAN* DOCTRINE AS GROUNDS FOR DISMISSAL OF ENTIRE CASE FOR "FAILURE TO STATE A CLAIM"

This Honorable Court is hereby asked to take judicial

notice of the entire contents of ¶2(D)(i) of Akers' "RESPONSES & OBJECTIONS TO: 'RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS'", filed as D.E. #43, Case No. 5:02cv0162, United States District Court for the Eastern District of Kentucky, at Lexington, on October 4, 2002 [Exhibit 02-6235-22, Joint Appendix, pages 850-854].

Additionally, Akers would point out that, with respect to ***District of Columbia Court of Appeals v. Feldman***, 460 U.S. 462, 476 (1983) and ***Rooker v. Fidelity Trust Co.***, 263 U.S. 413 (1923), **both of those cases are obviously inapplicable to the instant case**[7] inasmuch they...

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[7] The underlying "criminal" cases originate from a series of events leading to what, **at its worst**, could be legally construed as nothing more than a misdemeanor "assault under extreme emotional disturbance" [see. e.g., Case No. 5:02cv0162, D.E. #29, ¶ 7(b) & FN7 thereto, i.e., "**Even under Kentucky law (particularly K.R.S. 508.040)**, Akers' so-called act of 'assault' of Bishop was punishable for only **a maximum fine of $250 and/or 90-day sentence in the county jail** [see 'OFFENSE, PENALTY AND BAIL SCHEDULE', APPENDIX A, Kentucky Rules of Court, 1995, West Publishing Company, November 1, 1994] absent unconstitutional '***ex post facto***' **enhancement** under the disguise of implementing, evolutionizing, and/or 'testing the mettle' of Kentucky's newly-enacted/enhanced 'Domestic Violence & Abuse' laws and, **only then, if proceedings had been initiated within the one (1) year statutory period required by K.R.S. 500.050(2).**" [see also, e.g., Akers' "Motion for Reconsideration", as filed in this Court [Case No. 01-o6243] on December 10, 2001, FN8, page 12 thereof]. Moreover, **there can be absolutely no question** that Akers had been **- at least twice - already fully-punished** for the events of May 4th and/or 5th, 1994 [see, e.g., Akers' Memorandum, Exhibit 02-6235-11, Joint Appendix at pages 538-593, ¶¶ E-34 w/FN44 thereto, E-37, E-38 w/FN49 thru FN53 thereto, E-51 w/FN81 thereto, & 81 w/FN76 thru FN82 thereto]. Not even considering the elements of malice, abuse of process, and fraud, ***inter alia***, Akers' convictions for **any charge** related to May 4th/5th, 1994, **was barred** by either the statute of limitations **and/or** the Fifth Amendment to the U.S. Constitution. Akers' conviction "First-Degree Stalking" is **even more easily defeated**, i.e., (1) there were no charges against Akers at the time he migrated back to Tennessee on September 23, 1994 [***id.***, ¶ E-51 w/FN63 thereto]; (2) thereafter, Akers did not voluntarily return **to any jurisdiction within Kentucky** and there is no allegation to the contrary [***id.***, ¶ E-54 w/FN64 & FN65 thereto]; (3) Akers never made **even a single threat of "serious physical injury or death" to Bishop or anyone else** - only "threats" of a civil law suit **- while within the State of Tennessee** [***id.***, ¶¶ E-56 thru E-64 w/FN66 thru FN69 thereto, FN72, & FN75]; (4) Akers' acts were lawful within the State of Tennessee [***id.***, ¶ E-60 w/FN69 thereto]; (5) **Akers acts were not cognizable under Kentucky Law** [see: K.R.S. 500.060 Territorial applicability", ***id.***, page

31, w/FN65 thereto]; & (6) **in essence**, Akers was convicted for violating a "protective order" **with which he had not been served and was not even aware of**, in **blatant violation of the Fourteenth Amendment to the U.S. Constitution** [*id.*, ¶¶ E-65 & E-66 w/FN70 thereto]. **Clearly, there were no actionable "criminal" bases for any manner of "assault" or "stalking"** charges against Akers and therefore, **there could have been no jurisdiction**.

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...address legal actions for which the trial court **clearly had both "personal" and "subject matter" jurisdiction**. The same is true with respect to *United States v. Owens*, 54 F 3d. 271, 274 (5th Cir. 1995); *Gottifried v. Medical Planning Services., Inc.*,142 f. 3d. 326, 330 (6th Cir.), cert denied, 525 U.S. 1041 (1998); *Migra v. Warren City School District Bd. of Ed.*, 465 U.S. 75, 85 (1984); *Rowe v. Bank One, Indianapolis NA*, 230 F.3d 1359, 2000 WL 1477231 (6th Cir., Sept. 25, 2000); & *Ritter v. Ross*, 992 F.2d 750 (7th Cir. 1993), cert. denied 510 U.S. 1046 (1994); 1008 (9th Cir. 2000); & *Bartell v. Lohiser*, 215 F.2d 550, 559 (6th Cir. 2000). Moreover, *Rowe v. Bank One, Indianapolis, NA*, **and** *Gottifried v. Medical Planning Services, Inc.* were rendered **after** most of the acts giving rise to Akers' herein claims **were completed**. **Neither of those cases**, whether supportive of Akers' case or supportive of any alleged "defenses", **can either set or affirm a precedent** with respect to the instant case inasmuch as to do so would be in distinct violation of Article 1- § 10 [Cl. 1] of the United States Constitution, i.e, as follows:

> "**No state shall...pass any...*ex post facto* law**,[8] or law impairing the obligation of contracts, or grant any title of nobility." (emphasis added)

It would stand to reason, then, that if a state is prohibited from making or enforcing any ***ex post facto*** law, that the Courts of the United States are equally-prohibited from implementing or enforcing any ***ex post facto*** common law. Further, although it would seem superfluous to address this issue any further, a perfect example of such a fundamental miscarriage of justice is presented within this very case, i.e., the indictment which led to

Akers' "criminal convictions" which underlie...

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[8] The term "***ex post facto***" is defined as: "[For L.L. *ex post facto*, 'from what is done afterward.] Formulated after the fact; **adding to or in some way altering previous requisites, thereby changing a previously determined situation. After the fact**. - *ex post facto* law, a law made after an offense but operative with respect to it." [Grolier WEBSTER INTERNATIONAL DICTIONARY, Copyright 1974] **See also**: "***ex post facto law***" defined: "A law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed." "...**every law** which, in relation to the offense or consequences, alters the situation of a person to his disadvantage. Wilensky v. Fields, Fla., 267 So.2d 1, 5." [Black's Law Dictionary, 6th Edition-1998 (emphasis added)]

...the bases for claims herein reads as follows:

> COUNT 1:
>
> On or about the 4th day of May, 1994, in Fayette County, Kentucky, the above named defendant assaulted Carolyn Patrick Akers **with his hands** causing **serious physical injury**;
>
> COUNT 2:
>
> From November 1994 until August 1995, in Fayette County, Kentucky, the above named defendant committed stalking in the first degree by **intentionally stalking Carolyn Patrick Akers when he contacted her for no legitimate purpose, made explicit or implicit threats of serious physical injury or death while said James G. Akers was under a Domestic Violence Order** to have no contact with Carolyn Patrick Akers. [Akers' Memorandum, Exhibit 02-6235-11, Joint Appendix at pages 588-591, emphasis added]

The resulting "True Bill", issued November 6, 1995, charged Akers with:

> "COUNT 1: ASSAULT FIRST DEGREE KRS 508.010; UOR 13013 CLASS B FELONY"; and "COUNT 2: STALKING FIRST DEGREE KRS 508.140; UOR 13242 CLASS D FELONY". [*id.*, pages 592-593]

Up to and including May 4, 1994, when Akers supposedly "assaulted" his wife (then Carolyn P. Akers), the standard of proof required for a "First Degree Assault" had been firmly-established by the Kentucky cases of:

> ***Wills v Commonwealth***, 502 SW(2d) 60 (Ky 1973), i.e., : "Notwithstanding claim that instruction of malicious striking and wounding with intent to kill should not have been given because it was not proven that defendant had used a deadly weapon, **other than his fist which has been held not to be a deadly weapon**, where defendant was not convicted upon charge of striking and wounding but upon lesser charge of assault and battery, instruction was not prejudicial to defendant" (emphasis added);
>
> ***Charles v Commonwealth***, 321 SW(2d) 253 (Ky 1959), i.e., "**The fist has been held not to be a deadly weapon**" (emphasis added);
>
> ***Reed v Commonwealth***, 248 SW(2d) 911 (Ky 1952), i.e., "**Hands and feet are not deadly weapons**. (Annotation from former KRS 435.170)" (emphasis added); &
>
> ***Roney v Commonwealth***, 695 SW(2d) 863 (Ky 1985), i.e., "**A human fist is not a 'dangerous instrument' within the meaning of first-degree assault statute, KRS 508.010**; in light of the ambiguity of the legislature's intent, rule of lenity is followed and it was error to instruct the jury to convict an accused if it believed fists were dangerous instruments." (emphasis added) [*id.*, FN36, page 34]

In 1996, however, nearly **two (2) years after the so-called "assault"**, the Kentucky Court of Appeals rendered Its decision in ***Johnson v. Commonwealth***, 926 SW(2d) 463 (Ky. App. 1996), "overruling" the previous precedent set in ***Wills***, ***Charles***, ***Reed***, and ***Roney***. Thus, the herein Defendants not only **fraudulently convicted** Akers of "First Degree Assault", but they did so **utilizing standards** which had been **unconstitutionally altered**, ***ex post facto***. Likewise, the application of **either** *Hermansen v. Chandler; Smith-Hunter v. Harvey; Ruff v. Runyon; Harvey v. Waldron;* **or** *Bartell v. Lohiser* to the instant case would be **essentially the same**, i.e., **unconstitutionally *ex post facto*** in violation of Article 1- § 10 [Cl. 1] of the U. S. Constitution.

ARGUMENT IV: DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ERRED BY APPLYING VARIOUS IMMUNITIES AS GROUNDS FOR DISMISSAL OF THE ENTIRE CASE

This Honorable Court is hereby asked to take judicial notice of the entire contents of ¶ 3(f), "MOTION TO STRIKE: DEFENDANT PAMELA MILLER'S 'RE-NOTICE & RENEWAL OF MOTION TO DISMISS', 'MOTION TO STAY DISCOVERY', & 'MOTION TO SUSPEND TIME TO ANSWER COMPLAINT' [Exhibit 02-6235-19, Joint Appendix at pages 803-805].

Obviously, the District Court completely misconstrued the facts of the case – or, at least, the timing with respect to those facts in that It has concluded that each and every one of the named Defendants is shielded from civil liability by either "judicial", "prosecutorial/quasi-judicial", and/or "witness" immunities and, thus, accepts the Defendants' ridiculous propositions that, e.g.,

> (i) By virtue of successful implementation and subsequent unlawful validation of **1993 conspiracies** in violation Title 42 U.S.C. § 1985, Defendants Miller, Witt,

and "LFG Does 1 through 50" have somehow gained some sort of "immunities" [see "COUNT ONE", Akers' Complaint, Exhibit 02-6235-02, Joint Appendix, "COUNT ONE", page 110];

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(ii) By virtue of their fraudulent testimony during fraudulent criminal trials of Akers in 1996 and 1998, Defendants Bishop, Fleming, Rushing, CBT Does 1 thru 40, Layne, Shannon, Vaughan, and Kelly acquired immunities for their **1994 conspiracies** in violation Title 42 U.S.C. § 1983 [***id.***, "COUNT(S) TWO thru FOUR", pages 111-113];

(iii) Defendants Bishop, Fleming, Rushing, Layne, Shannon, Kelly, SCC Does 1 thru 50, Witt, FCC Does 1 thru 30, Clark, and LFG Does 1 thru 60 have **all acquired immunities** for their **1994 "unlawful imprisonment"** of Akers [***id.***, "COUNT(S) FIVE, SIX, & SEVEN", pages 113-115] by virtue of fraudulent testimony of Bishop, Fleming, Rushing, Layne, and Shannon during fraudulent criminal trials of Akers in 1996 and 1998;

(iv) By virtue of their fraudulent testimony during fraudulent criminal trials of Akers in 1996 and 1998, Defendants Bishop, Fleming, Layne, Kelly, Rushing somehow acquired immunities for their **1994 predicate acts** in violation of Title 18 U.S.C. § 1961, ***et seq.***, ***viz***, "kidnaping", "unlawful imprisonment", "theft by unlawful taking (over $300.00)", "tampering with physical evidence", "wire fraud", "mail fraud", felonious "forgery", "theft by extortion", "blackmail", and "extortion" [***id.***, "COUNT(S) FIFTEEN (a) thru (d), pages 120-124; SIXTEEN (a), pages 124-125; & EIGHTEEN (a), pages 127-128, respectively];

(v) By virtue of their fraudulent criminal convictions of Akers in 1996 and 1998, Defendants Red Corn and Overstreet acquired immunities for their **1995**

> **predicate acts** in violation of Title 18 U.S.C. § 1961, ***et seq.***, ***viz***, "tampering with a witness" and "influencing a jury" [***id.***, "COUNT(S) NINETEEN (a) through (c), pages 128-131; & TWENTY (a), pages 131-133; & EIGHTEEN (a), pages 127-128, respectively]; &
>
> (vi) Notwithstanding that such acts **could not, by any stretch of imagination**, be considered "judicial", "quasi-judicial", **or in any other manner lawful**, the Defendants Red...
>
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> ...Corn, Overstreet, and Williams have immunities for their **1998 predicate acts** in violations of Title 18 U.S.C. § 1961, ***et seq.***, ***viz***, interstate "blackmail", interstate "extortion", and "civil rights intimidation" [***id.***, "COUNT TWENTY-ONE (a) thru (c), pages 133-135].

First, it is crucial to recognize that the history of "judicial immunities", "prosecutorial/ quasi-judicial immunities", and "witness immunities" is demonstrative of the underlying purpose and intent of ensuring "good faith" within the legal process. In the instant case, however, the Defendants-Appellees have **intentionally misused and abused** the common law principles of "judicial immunities", "prosecutorial/quasi-judicial immunities", "witness immunities", and all other "absolute and/or qualified immunities" as illicit amendments to the United States Constitution and applied them for the self-serving, self-protecting, and self-perpetuating purposes of concealing **their own criminal acts**.[9] Rather than effect the intended purpose of "good faith", they have been nothing more than licenses for these Defendants to "do as they well please" to perpetuate their individual and/or collective agendas - **with total and complete impunity and absolutely no accountability**.

Secondly, there are no constitutional, legislative, or statutory bases for such immunities - especially when, as in the instant case, they are clearly at odds with specific provisions of the Constitution and duly-enacted Laws of the United States of

America. Although it is clear that the Federal Courts have authority to implement policies with respect to the **due administration of justice, they do not have authority to sanction and/or pardon criminal acts** or, indeed, **any other act** in clear and distinct violation of the Constitution and Laws of the United States of...

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[9] Moreover, insofar as Akers has been able to ascertain, those herein Defendants-Appellees who are long-time members and/or officers of Southland Christian Church of Lexington, Inc., include , **but are not necessarily limited to**: Carolyn P. Bishop, Todd M. Layne, Donald R. Shannon, Jerry L. Kelly, Katherine H. Witt, and Rebecca M. Overstreet.

America. **Not even the Chief Justice of the United States Supreme Court is lawfully immune to criminal or civil penalties** for such unlawful acts, **whether intrinsically or extraneously** associated with public office [see. e.g. ***McMillan v. Svetanoff***, 793 F.2d 149 (5th Cir. 1986), i.e.,

> "Immunity is only granted when essential to protect the integrity of the judicial process"; "When the initiative and independence of the judiciary is not effectively impaired, the doctrine of judicial immunity does not apply"; "Judicial immunity should not be extended lightly or only because the actor is a judge. Before a judge is granted immunity, courts should examine the acts complained of to determine whether they are 'judicial'. If the acts do not involve the judicial process so that a fear exists that freedom of judicial decision-making may be stifled, the judge should not be free from suit"; & ("OUTCOME: The court affirmed the decision of the district court, which denied appellant judge's motion for summary judgment").
>
> **See also**: ***Cleavinger v. Saxner***, 474 U.S. 193, 106 S. Ct. 496, 501, 88 L. Ed. 2d 507 (1985) (citing favorably Saxner v. Benson, 727 F.2d at 669, 674 n.2 (Cudahy, J., concurring)), i.e., "We must be equally hesitant in

applying the doctrine to judges acting outside the traditional dispute resolution function"; ***Doe v. County of Lake, Indiana, et al,*** 399 F. Supp. 553, i.e., "Despite its fundamental and efficacious purpose, the doctrine of judicial immunity is not absolute and unlimited; it does not immunize every state court judge in every lawsuit. On the contrary, application of the doctrine is restricted to its single objective: to protect judicial freedom in the delicate process of deciding civil and criminal matters on their merits. Where the initiative and independence of the judiciary will not be effectively impaired, courts have refused to apply the doctrine [**6] of judicial immunity. For example, there is no official immunity from criminal liability. ***O'Shea v. Littleton,*** 414 U.S. 488, 503, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974). The Supreme Court recognized long ago that a state court judge can be made to answer criminally for violating the criminal provisions of the Civil Rights Act. ***Ex parte Virginia,*** 100 U.S. 339, 25 L. Ed. 676 (1879). In addition, federal courts have held that application of the doctrine is restricted to the following areas: 1. immunity applies only when judges are faced with suits involving their judicial as opposed to ministerial or administrative duties, and 2. immunity applies only when officials are sued for damages"; **and**

Eades v. Sterlinske, 810 F.2d 723 (7th Cir. 1986), i.e, "Judicial immunity is a creature solely of the common law. However, Congress did not abrogate the defense in enacting §§1 of the Civil Rights Act of 1871, 42 U.S.C.S. §§ 1983."]

Clearly, violators of Title 18 U.S.C. § 1961, ***et seq.***; Title 42 U.S.C. § 1983; and Title 42 U.S.C. § 1985 can not be permitted to escape liabilities by subsequently initiating **fraudulent criminal charges against their victim** and then fraudulently convicting him or testifying at his resulting trial.

ARGUMENT V: **DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ERRED BY ITS APPLICATION OF DOCTRINES OF "COLLATERAL ESTOPPEL"/ *RES JUDICATA* AS GROUNDS FOR DISMISSAL OF ENTIRE CASE FOR "FAILURE TO STATE A CLAIM"**

This Honorable Court is hereby asked to take judicial notice of the entire contents of ¶2(F)(i)/(ii), Exhibit 02-6235-19, Joint Appendix at pages 803-805; **and** ¶2(C)(ii), Exhibit 02-6235-22, Joint Appendix at pages 844-845.

Additionally, although the District Court does not specifically use the terms "***res judicata***" or "collateral estoppel", It has **obviously misapplied** those doctrines in Its "DISCUSSION V.1 - Preclusive Effect of 1999 Civil Rights Order" [Exhibit 02-6235-05, Joint Appendix at pages 182-183] and preludes thereto entitled "PRIOR LITIGATION IN THIS COURT - 1999 Civil Rights Action" & "1999 HABEAS CORPUS PETITION" [*id.*, pages 162-163], i.e., as follows:

> "The court takes judicial notice of the typed fourteen-page complaint Akers filed *pro se* in this court on May 10, 1999, being Civil Action 99-183 ('the 1999 civil rights action')"; & "The facts span the period between May 1994 and October 1998, and are summarized in this court's May 19, 1999 Memorandum Opinion and Order ('the 1999 Civil Rights Order'), **and are adopted and incorporated herein by reference**." [*id.*, page 3];
>
> "The petition again reiterated all of the events concerning Akers and Bishop's marital discord and Akers's subsequent criminal prosecutions in the Fayette District and Circuit Courts between May, 1994, and June 1999. Akers sought an order from this court releasing him from state custody on bond during the pendency of his appeal of the 1998 assault and stalking convictions, which appeal was then pending in the Kentucky Court

of Appeals. On February 2, 2000, this court entered a judgement dismissing Akers' habeas corpus petition. Akers did not appeal this court's dismissal of the 1999 habeas proceeding." [*id.*, page 4]; &

"The 1999 civil rights action stemmed from essentially the same set of facts and occurrences through and including May 10, 1999) which form the basis of the instant complaint. As discussed, the instant complaint does contain some, but not many, facts alleged to have occurred subsequent to May 10, 1999. While Akers has not proceeded in the instant case *in forma pauperis* (IFP), case law governing IFP proceedings (which usually also involve *pro se* plaintiffs) is persuasive. Courts may appropriately dismiss IFP actions as frivolous when the action 'seek[s] to relitigate claims which allege substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the IFP plaintiff.' Wilson v. Lynaugh, 878 F.2d846, 850 (5th Cir. 1989); see also Curtis v. Boggs, 2001 WL 649735 (N.D. Tex.); Robertson v. Burger King Corp., 1994 WL 424431 (E.D.La).

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Under Wilson, this court deems it appropriate to dismiss the instant action against Bishop, Overstreet, Swartz, Red Corn and Clark as frivolous. The present claims against these defendants are essentially repetitive of the claims Akers asserted in the 1999 civil rights action. Akers alleges 'substantially the same facts that arise from a common series of event that were unsuccessfully litigated by Plaintiff in [1999].' Curtis v. Boggs at **2. Thus, dismissal of Akers' complaint against these defendants is appropriate on these grounds." [*id.*, pages 23 - 24 thereof]

Akers also hastens to counter that **there are countless Federal Cases – including the very ones the District Court cites**

- which make it abundantly clear that prior invalidation of state court convictions **is <u>not</u> a pre-requisite** to a Title 42 U.S.C. § 1983 action when those convictions were obtained, as in the instant case, without jurisdiction [***Rooker v. Fidelity Trust Co., et al***, HN228]; or by either "abuse of process" or "some type of fraud" [***Heck v. Humphrey***, HN11 & FN3].

Moreover, if the District Court had simply taken the time to review the state court records or, more appropriately, permitted a fair and impartial jury to do so, It would almost certainly have recognized from the audiotapes and videotapes incorporated herein by reference that this case **<u>has</u> <u>never been</u> "litigated"** but, rather, **<u>perpetrated</u> - <u>twice</u>**. There is a significant difference between the two concepts. Akers is not "attempting to re-litigate" his two (2) criminal trials within the Fayette [Kentucky] Circuit Court inasmuch as "**the damage has already been done**" to Akers' person, property, and businesses. **<u>In the instant case</u>**, Akers is only attempting to obtain proper redress as specifically provided by Title18 U.S.C. § 1964(c), Title 42 U.S.C. §§ 1983 & 1985(3), and the First Amendment to the United States Constitution. Akers clearly understands that any "injunctive relief" must properly be sought within the Kentucky Court of Appeals, Kentucky Supreme Court, and/or the United States Supreme Court.

It is also crucial to recognize the chronology of the instant case - especially with respect to the timing of Akers' two (2) "criminal" cases and any subsequent actions seeking injunctive relief, i.e., (a) Akers was released from the custody of Kentucky authorities on July 11, 2000; ...

...(b) Akers herein claims pursuant to Title 42 U.S.C. §§ 1983 & 1985(3) **would have been <u>barred</u> by applicable statutes of limitations** after November 28, 2000; and (c) many of Akers herein claims pursuant to Title18 U.S.C. § 1964(c) were approaching similar deadlines. A motion pursuant to R.Cr. 11.42 is not time barred until July 7, 2003, and insofar as Akers can determine, there is no time limitation on the remedy Akers

will likely employ to have his criminal convictions either set aside or otherwise declared invalid, i.e., a "Petition for Writ of Prohibition". Thus, first, it would have been virtually impossible for Akers to complete either of those forms of relief prior to the approaching deadlines and, secondly, any such action would have invoked *Younger's* Abstention Doctrine and the Defendants would have prevailed on that basis.

Moreover, **Akers <u>clearly</u> needs evidence from the instant case to <u>support</u>** his motion pursuant to R.Cr. 11.42 and/or "Petition for Writ of Prohibition" in the Kentucky Court of Appeals, Kentucky Supreme Court, and/or United States Supreme Court. Without such evidence, how could either of those Courts render an informed decision with respect thereto?

<u>ARGUMENT VI</u>: DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY, LEXINGTON, ABUSED ITS DISCRETION BY REFUSING TO PROPERLY APPLY REQUIRED "STANDARD OF REVIEW" WITH RESPECT TO DEFENDANTS' "MOTION[S] TO DISMISS"

In support of Its decision, the District Court cites the cases of *Cruz v. Beto*, 405 U.S. 319 (1972); *Haines v. Kerner*, 404 U.S. 519 (1972); *Malone v. Colyer*, 710 F.2d 258,260 (6th Cir. 1983); *Conley v.Gibson*, 335 U.S. 41, 45-46(1957); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Rauch v. Day & Night Mfg. Corp.*, 576 F2d 697 (6th Cir. 1978); & *Westlake v. Lucas*, 537, F.2d 857 (6th Cir. 1976). A thorough review of these cases, however, reveals that they actually support a reversal of her ruling, ***viz***,

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<u>Cruz v. Beto</u>, "Granting the plaintiff's motion in forma pauperis and his petition for certiorari, the United States Supreme Court vacated the judgment and

remanded the cause for a hearing and findings"; "Federal courts sit not to supervise prisons, but to enforce the constitutional rights of all 'persons', which include prisoners"; {***HR4} [4] "We said in ***Conley* v. *Gibson***, 355 U.S. 41, 45-46, that 'a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief'"; & {**1082} ..." **If the allegations of this complaint are assumed to be true, as they must be on the motion to dismiss**, Texas has violated the First and Fourteenth Amendments." (emphasis added)

Haines v. Kerner, et al, i.e., "The District Court dismissed the complaint for failure to state a claim upon which relief could be granted, and the United States Court of Appeals for the Seventh Circuit affirmed (427 F.2d 71). On certiorari, the United States Supreme Court reversed. In a per curiam opinion, expressing the unanimous views of the court, it was held that since it did not appear beyond doubt that the inmate could prove no set of facts in support of his claim which would entitle him to relief, he was entitled to an opportunity to offer proof."

Malone v. Colyer, i.e., "Trial courts are granted broad discretion to dismiss complaints as frivolous, but such discretion may not be exercised arbitrarily. ***Byrd v. Wilson***, 701 F.2d 592 at 594, (6th Cir. 1983), citing ***Boyce v. Alizaduh***, 595 F.2d 948, 951-953 (4th Cir. 1979). Therefore, on review this Court must examine the pro se complaint anew to determine whether it is indeed frivolous. Id. Pro se complaints are held to 'less stringent' standards than formal pleadings drafted by lawyers.' ***Haines v. Kerner***, 404 U.S. 519, 520, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972). And, the allegations in pro se complaints must be taken as true and construed in favor of the plaintiff. ***Westlake v. Lucas***, 537 F.2d 857, 858 (6th Cir. 1976). ...[*261] The Fourth Circuit follows a standard which varies slightly from ***Estelle v. Gamble***: 'To satisfy the test of frivolousness under §§ 1915(d), it is

accordingly essential for the district court to find 'beyond doubt' and under any 'arguable' construction, 'both in law and in fact' of the substance of the plaintiff's claim that he would not be entitled to relief.' ***Boyce v. Alizaduh***, 595 F.2d at 952. The Tenth Circuit follows a standard unique to itself: 'The test of frivolity is whether a plaintiff can make a rational argument on the law and facts in support of his claim.' ***Wiggins v. New Mexico State Supreme Court Clerk***, 664 F.2d 812, 815 (10th Cir. 1981) (J. Seymour dissenting, at 818, applying ***Estelle v. Gamble***). ...Two of Malone's claims withstand the test of frivolousness we have discussed in this opinion. Therefore, we remand the case to enable him to offer proof on these claims. ...Judgment is affirmed in part and reversed in part. The case is remanded for proceedings consistent with this opinion." (emphasis added)

Conley, et al, v. Gibson, et al, i.e., "On certiorari, the United States Supreme Court reversed the judgment below. Black, J., speaking for a unanimous Court, held that the Railway Labor Act did not give the Adjustment Board jurisdiction of the controversy, and ruled, further, that the complaint was not to be dismissed either for failure to join the railroad as a defendant (since the railroad was not an indispensable party), or for failure to adequately set forth a claim upon which relief could be granted."

Scheuer v. Rhodes, et al, i.e., "...We granted certiorari [n. 1] in these cases to resolve whether the District Court correctly dismissed civil damage actions, brought under **42 U. S. C. § 1983,** on the ground that these actions were, {****4} as a matter of law, ...

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...against the State of Ohio, and hence barred by the {*234} Eleventh Amendment to the Constitution and, alternatively, that the actions were against state officials who were immune from liability for the acts alleged in

the complaints. ...[S]ince ***Ex parte Young***, 209 U.S. 123 (1908), it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. ***Ex parte Young*** {****11} teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution, he 'comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected *in his person* to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.' *Id.*, at 159-160. (Emphasis supplied.) ...While it is clear that the doctrine of ***Ex parte Young*** is of no aid to a plaintiff seeking damages from the public treasury, ***Edelman* v. *Jordan, supra; Kennecott Copper Corp.* v. *State Tax Comm'n***, 327 U.S. 573 (1946); ***Ford Motor Co.* v. *Dept. of Treasury***, 323 U.S. 459 (1945); ***Great Northern Life Insurance*** {****12} ***Co.* v. *Read***, 322 U.S. 47 (1944), damages against individual defendants are a permissible remedy in some circumstances notwithstanding the fact that they hold public office. ***Myers* v. *Anderson***, 238 U.S. 368 (1915). See generally ***Monroe* v. *Pape***, 365 U.S. 167 (1961); ***Moor* v. *County of Alameda***, 411 U.S. 693 (1973). In some situations a damage remedy can be as effective a redress for the infringement of a constitutional right as injunctive relief might be in another. ...There is {****30} no such avenue of escape from the paramount authority of the Federal Constitution. When there is a substantial {**1693} showing that the exertion of state power has overridden private rights secured by that Constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression.' ***Id.***, at 397-398. ...The District Court acted before answers were filed and without any evidence other than the copies of the proclamations issued by respondent Rhodes and brief affidavits of the Adjutant General and his assistant. In

dismissing the complaints, the District Court and the Court of Appeals erroneously accepted as a fact the good faith of the Governor, and took judicial notice that 'mob rule existed at Kent State University.' There was no opportunity afforded petitioners to contest {*250} the facts assumed in that conclusion. There was no evidence before the courts from which such a finding of good faith could be properly made and, in the circumstances of these cases, such a dispositive conclusion could not be judicially noticed. We can readily grant that a declaration of emergency by the chief executive of a State is entitled to great weight but it is not conclusive. ***Sterling* v. *Constantin, supra***. ...Further proceedings, either by way of summary judgment or by trial on the merits, are required. The complaining parties are entitled to {***105} be heard more fully than is possible on a motion to dismiss a complaint. ...We intimate no evaluation whatever as to the merits of the petitioners' claims or as to whether it will be possible to support them by proof. We hold only that, on the allegations of their respective complaints, they were entitled to have them judicially resolved. ...The judgments of the Court of Appeals are reversed and the cases are remanded for further proceedings{****33}consistent with this opinion." (emphasis added)

Rauch v. Day and Night Manufacturing Corp., et al,, i.e., "It is an elementary principle of jurisprudence that a court of justice cannot acquire jurisdiction over the person...

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...of one who has no residence within its territorial jurisdiction, except by {**8} actual service of notice within the jurisdiction upon him or upon someone authorized to accept service in his behalf, *or by his waiver, by general appearance or otherwise, of the want of due service* (emphasis added). ...The judgment of the district court is reversed and the case remanded to the district court for further

proceedings."[10]

Westlake v. Williams, et al, 537 F.2d 857 (6th Cir. 1976), i.e.,"Dismissals of complaints under the civil rights statutes are scrutinized with special care. *See* ***Azar v. Conley,*** 456 F.2d 1382, 1384 [n. 1] (6th Cir. 1972); ***Lucarell v. McNair,*** 453 F.2d 836, 838 (6th Cir. 1972). ...{*861} In our view, Appellant has adequately stated a cause of action for deprivation of needed medical care and the District Court was in error in dismissing the case at the pleading stage. Appellant has alleged that he was forced to endure a period of intense discomfort because his pleas for medical assistance went unheeded by his jailers. He should have the opportunity to prove the truth of his allegations at an evidentiary hearing. Appellees should be directed to respond to Appellant's complaint and, should the trier of fact conclude that Appellant's accusations are true, the District Court is empowered to grant complete relief. ...Reversed and remanded." (emphasis added)

The District Court should have read the entirety of these cases before relying upon them as "authorities" for dismissal of Akers' Complaint.

ARGUMENT VII: DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ABUSED ITS DISCRETION IN THE DENIAL OF AKERS' FUNDAMENTAL RIGHTS TO TRIAL BY A FAIR AND IMPARTIAL JURY AS THE ULTIMATE "FINDER OF FACT"

RULE 38. JURY TRIAL AS OF RIGHT, Federal Rules of Civil Procedure reads:

"**(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment** to the

> Constitution or as given by a statute of the United States **shall be preserved to the parties inviolate**.
>
> **(b) Demand. Any party may demand a trial by jury of any issue triable of right by jury** by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action..." (emphasis added)

The Seventh Amendment to the United States Constitution reads:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to rules of the common law."

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[10] See, e.g., "ARGUMENT III" and, **especially, FN7 thereto**, ***supra***, page 16 hereof.

Without question, Akers has made a such "demand" for trial by jury, on all issues, ***viz***:

> "**FOR TRIAL BY JURY** comprised of twelve (12) disinterested and impartial men and/or women of high moral character and integrity, against all Defendants, on all Counts." [see Akers' Complaint, Joint Appendix at page 143 thereof];

Obviously, the "value in controversy" herein exceeds "twenty dollars"; **Akers is clearly entitled to a "trial by jury" of the instant case**; and, **without question, the District Court has abused Its discretion** in denying Akers that fundamental right.

ARGUMENT VIII: ALTERNATIVELY, THE HEREIN CASE SHOULD BE HELD "IN ABEYANCE" PENDING FILING & DISPOSITION OF AKERS' "PETITION FOR WRIT OF PROHIBITION" SEEKING TO SET ASIDE CONVICTIONS AS UNCONSTITUTIONAL

These Defendants-Appellees and, now, even the District Court, have gone to great length to exploit Akers' remaining "criminal convictions" for felonious "assault" and felonious "stalking" as grounds for dismissal of Akers' instant "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)". Nevertheless, **there can be no doubt, whatsoever**, that those same "convictions" were clearly prohibited by, ***inter alia***, the Fourth, Fifth, Sixth, Eighth, & Fourteenth Amendments to the United States Constitution and **must**, therefore, be **set aside**.[11] The problem, of course, is "timing" and that issue has been extensively addressed within Akers' "ARGUMENT V" [***supra***, pages 23-25 hereof].

If, even after consideration of the hereinabove, this Honorable Court concludes that matter to be of significance, Akers must respectfully ask that the instant case be "held in abeyance" until such time as Akers' "criminal convictions" are properly disposed of. Akers will then, of course, proceed immediately with all measures necessary to effectuate such a disposal.

---

[11] See, e.g., "Akers' Memorandum" [Exhibit 02-6235-11", Joint Appendix at pages 481-488 (esp., FN1 thru FN6); **U.S. v. Casciano** [***id.***, FN70, page 575]; & "ARGUMENT III", **esp.**, FN7 & FN8 thereto [***supra***, pages 16-19].

CONCLUSION

WHEREFORE, with due consideration to all of the foregoing, the Plaintiff-Appellant, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, respectfully asks and prays of this Honorable Sixth Circuit Court of Appeals to "**REVERSE**" the "JUDGEMENT" and "MEMORANDUM OPINION AND ORDER, DISMISSING" as entered on September 25, 2002, by Judge Jennifer B. Coffman, Eastern District of Kentucky-Lexington Division, and remand with instructions that: (1) the case shall forthwith be re-transferred to United States District Court for the Middle Tennessee District-Nashville Division as Case No. 3:00cv1142 therein; (2) the case shall forthwith be set "**FOR TRIAL BY JURY** comprised of twelve (12) disinterested and impartial men and/or women of high moral character and integrity, against all Defendants, on all Counts", **as demanded**; (3) Akers shall be afforded the opportunity to prove the truth of his allegations; (4) the Defendants-Appellees be forthwith directed to answer Akers' complaint; (5) should the jury conclude that Akers' accusations are true, the District Court is empowered to grant complete relief consistent with ***Westlake v. Williams, et al***, *supra*, and ***Haines v. Kerner, et al***. *supra*; **or** (6) **alternatively**, that the case be "held in abeyance" consistent with "ARGUMENT XII" [***supra***, page 29 hereof].

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843
Facsimile: 615/831-9307

-30-

CERTIFICATION OF COMPLIANCE

PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, hereby certifies that the foregoing "FINAL BRIEF FOR PLAINTIFF-APPELLANT" fully complies with FRAP 32(a)(7)(C) inasmuch as, according to the "WORD PERFECT 9" program utilized, the said "FINAL BRIEF FOR PLAINTIFF-APPELLANT" contains **exactly** 62,673 characters; **11,633 words**; 486 sentences; **966 lines**; 239 paragraphs; & **30 pages** (**excluding** those items listed in 6 Cir. R. 28(b) and/or Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure).

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
Post Office Box 3648
Brentwood, Tennessee 37024
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REQUEST FOR ORAL ARGUMENTS

The District Court has rendered a thirty-four (34) page **"MEMORANDUM OPINION AND ORDER, DISMISSING"** and cited no less than **eighty-four (84) cases** as purported "authorities" in support of Its ruling. It would be virtually impossible to address all those issues and cases within the limitations imposed upon this "brief" by F.R.A.P 32(a)(7).

Akers believes that, within his hereinabove "ARGUMENT(S) I through VIII", he has adequately addressed all significant issues presented by the District Court – and has provided this Honorable Court with **compelling arguments** in support of remand. If, however, the Court finds any remaining contentions of the District Court to be conclusively meritorious, Akers must hereby respectfully request that "oral arguments" be granted pursuant to F.R.A.P. 34(a)(2) **and** 6 Cir. R. 34(a), in order that his "due process rights" to be heard will be properly respected.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843
Facsimile: 615/831-9307

FINAL DESIGNATION OF APPENDIX CONTENTS

PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654 **in conjunction with** 6 Cir. R. 28(d) and/or 6 Cir. R. 30(b), hereby files and serves as an addendum to the foregoing "FINAL BRIEF FOR PLAINTIFF-APPELLANT" designation of the parts of the record included in the "Joint Appendix" as follows:

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02-6235-01	Certified "Civil Docket" (Case No. 3:00cv1142), as of 03/29/02	1
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02-6235-03	"ORDER" and contemporaneous "MEMORANDUM" transferring case to Eastern District of Kentucky as entered by Hon. Robert L. Echols, Chief Judge for U.S. District Court for the Middle Tennessee District-Nashville Division, on 09/18/2001	149
02-6235-04	"JUDGEMENT" as entered by Judge Jennifer B. Coffman, U. S. District Court for Eastern District of Kentucky-Lexington Division, on 09/25/02	157
02-6235-05	"MEMORANDUM OPINION AND ORDER, DISMISSING" as entered by Judge Jennifer B. Coffman, U. S. District Court for Eastern District of Kentucky-Lexington Division, on 09/25/02	160
02-6235-06	"Motion to Dismiss or Transfer Venue" filed on behalf of Defendants Thomas L.	

Clark, Rebecca M. Overstreet, Pamela R. Goodwine, Lou A. Red Corn, Cindy G. Schwartz, & Todd D. Ferguson (D.E. #38, Case No 3:00cv1142), as entered 12/12/01.....194

02-6235-07 "Memorandum in Support of the Motion of Defendant, John J. Vaughan, M.D., to Dismiss the Complaint or Transfer the Action" (D.E. #52, Case No 3:00cv1142), entered 12/26/01.....204

02-6235-08 "Motion of Defendant Ernest Williams to Dismiss" and "Memorandum of Law in Support of Defendant Williams' Motion to Dismiss", (D.E. #55, Case No. 3:00cv1142), entered 01/05/01.....227

02-6235-09 "Motion to Dismiss", filed by Defendant Allen I. Rushing, (D.E. #71, Case No. 3:00cv1142), entered 01/30/01.....232

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02-6235-10 "NOTICE OF APPEAL to UNITED STATES COURT OF APPEALS for the SIXTH CIRCUIT"; and transmittal letter tendering "Cashier's Check No. 1336703" for "filing fees" & "docketing fees" therewith, as filed and served 10/03/2002.....236

02-6235-11 Entire contents of Akers' "Petition for Writ of Certiorari" as filed with the United

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02-6235-14	Plaintiff James G. Akers' "Motion to Strike 'Defendant Jerry L. Kelly's Motion to Dismiss'"; and "Renewed Motion to Strike; and Motion to Stay Proceedings Pending Determination of 'Venue' by United States Supreme Court" (D.E. #7, Case No. 5:02cv0162), & "Memorandum & Memorandum of Law [in suppor thereof] entered 06/19/02	719
02-6235-15	Plaintiff James G. Akers' "Demand for 'Judgement by Default'; and Motion for Partial Summary Judgement" (D.E. #12, Case No. 5:02cv0162), entered 06/19/02	745
02-6235-16	Plaintiff Akers' "Motion to Strike [Defendant, Doris Fleming, Motion to Dismiss]; and Motion for Sanctions Pursuant to F.R.C.P. 11(c)(1)(A) & 11(c)(2)" (D.E. #25, Case No. 5:02 cv0162), entered 08/02/02	760

02-6235-17 Plaintiff James G. Akers' "Motion to Strike [Defendant Defendant Witt's Response Motion to Plaintiff's Motion for Summary Judgement]; and Motion for Sanctions Pursuant to F.R.C.P. 11(c)(1)(A) & 11(c)(2)" (D.E. #28, Case No. 5:02cv0162), entered 08/08/02.....768

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02-6235-18 Plaintiff James G. Akers' "Response & Objections to: Defendants' Clark, Red Corn, Overstreet Schwartz, Ferguson, & Goodwine] "Motion to Stay Discovery, Suspend Time to Answer Complaint Until Dispositive Motions Have Been Addressed, or Alternatively to Dismiss for Failure to Comply with Rule 8..." (D.E. #29, Case No. 5:02 cv0162), entered 08/08/02.....778

02-6235-19 Plaintiff James G. Akers' "Motion to Strike [Defendant Pamela Miller's 'Re-notice & Renewal of Motion to Dismiss'", (D.E. #32, Case No. 5:02cv0162), entered 08/14/02.....798

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02-6235-23 "Memorandum Opinion and Order" dismissing, "**without prejudice**", Civil Action No. 99-173 in United States District Court for the Eastern District of Kentucky, at Lexington, and as entered 05/17/1999 (Over the "**OBJECTIONS**" of Plaintiff James G. Akers on bases, ***inter alia***, that same is **irrelevant and inadmissible** with respect to the instant Case Nos. 3:00cv1142, 5:02 cv0162, & COA6-02-6235).....874

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843
Facsimile: 615/831-9307

CERTIFICATE OF SERVICE

COMES THE PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, and certifies that I have on this, the 28th day of February, 2003, served two (2) true and complete copies of the foregoing "FINAL BRIEF FOR PLAINTIFF-APPELLANT" upon respective lead counsel for each and every named Defendant-Appellee, via "UNITED STATES MAIL-FIRST CLASS", postage pre-paid, and in that manner as follows:

(Listing of served Parties and/or their respective Counsel-of-Record are omitted from instant Petition for Writ of Certiorari for the purposes of economy & handling by Court. **See official record for listings.**)

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

App. 5

[END OF DOCUMENT]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

In Re	)	
	)	
JAMES G. AKERS,	)	
	)	
Plaintiff-Petitioner,	)	
v.	)	**FILE NO. 5:02cv0162**
	)	
	)	
CAROLYN P. BISHOP; *et al,*	)	
	)	
Defendants-Respondents.	)	
_____	)	

NOTICE OF APPEAL to
UNITED STATES COURT OF APPEALS
for the SIXTH CIRCUIT

NOTICE IS HEREBY GIVEN that James G. Akers, the plaintiff, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, appeals to the United States Court fo Appeals for the Sixth Circuit from the order of the district court for the Eastern District of Kentucky, Lexington Division, entered September 26, 2002, to wit: order of "JUDGEMENT" and contemporaneous "MEMORANDUM OPINION AND ORDER, DISMISSING" the above-styled case and ordering that plaintiff's "Motion[s] to Strike", "Motion for Default Judgement", and "Motion for Summary Judgement" be "DENIED".

The parties to the said order appealed from and the names and addresses of their respective attorneys are as follows:

Plaintiff-Appellant:
(a) James G. Akers

Attorney of record:
James G. Akers, ***pro se***
Post Office Box 3648
Brentwood, Tennessee 37024

Defendants-Appellees:	***Attorney(s) of record***:
(a) Carolyn P. Bishop	Leslie Rosenbaum, Esquire 300 Lexington Building 201 West Short Street Lexington, Kentucky 40507
(b) Doris Fleming	Douglas L. Hoots, Esquire Landrum & Shouse, LLP Post Office Box 951 Lexington, Kentucky 40588-0951
(c) Allen I. Rushing	William W. Allen, Esquire 201 West Short Street Lexington, Kentucky 40507-1269
(d) CBT Does 1 through 40	*[unserved and unrepresented due to foreclosure of discovery]*
(e) Todd M. Layne	Guy R. Colson, Esquire Fowler, Measle & Bell, LLP 300 West Vine Street, Suite 600 Lexington, Kentucky 40507-1660
(f) Donald R. Shannon	Guy R. Colson, Esquire Fowler, Measle & Bell, LLP 300 West Vine Street, Suite 600 Lexington, Kentucky 40507-1660
(g) Jerry L. Kelly	Augustus S. Herbert, Esquire Middleton Reutlinger 2500 Brown & Williamson Tower Louisville, Kentucky 40202
(h) SCC Does 1 through 50	*[unserved and unrepresented due to foreclosure of discovery]*
(i) John J. Vaughan, M.D.	William W. Allen, Esquire 201 West Short Street Lexington, Kentucky 40507-1269

(j) Thomas L. Clark	D. Brent Irvin, Asst. Atty. Gen. Commonwealth of Kentucky Capitol Building, Suite 118 700 Capitol Avenue Frankfort, Kentucky 40601
(k) Katherine H. Witt	Bennett E. Bayer, Esquire Landrum & Shouse P. O. Box 951 Lexington, Kentucky 40588-2424
(l) FCS Does 1 through 30	*[unserved and unrepresented due to foreclosure of discovery]*
(m) Pamela Miller	Leslye M. Bowman, Dir. of Litig. Lexington-Fayette Urban County Govt. 200 East Main Street Lexington, Kentucky 40507
(n) LFG Does 1 through 60	*[unserved and unrepresented due to foreclosure of discovery]*
(o) Lou A. Red Corn	D. Brent Irvin, Asst. Atty. Gen. Commonwealth of Kentucky Capitol Building, Suite 118 700 Capitol Avenue Frankfort, Kentucky 40601
(p) CAO Does 1 through 20	*[unserved and unrepresented due to foreclosure of discovery]*
(q) FCC Does 1 through 10	*[unserved and unrepresented due to foreclosure of discovery]*
(r) Rebecca M. Overstreet	D. Brent Irvin, Asst. Atty. Gen. Commonwealth of Kentucky Capitol Building, Suite 118 700 Capitol Avenue Frankfort, Kentucky 40601

(s) Cindy G. Schwartz	D. Brent Irvin, Asst. Atty. Gen. Commonwealth of Kentucky Capitol Building, Suite 118 700 Capitol Avenue Frankfort, Kentucky 40601
(t) Ernest W. Williams	Patrick W. Michael, Esquire Woodward, Hobson & Fulton 2500 National City Tower Louisville, Kentucky 40202
(u) Todd D. Ferguson	D. Brent Irvin, Asst. Atty. Gen. Commonwealth of Kentucky Capitol Building, Suite 118 700 Capitol Avenue Frankfort, Kentucky 40601
(v) Pamela R. Goodwine	D. Brent Irvin, Asst. Atty. Gen. Commonwealth of Kentucky Capitol Building, Suite 118 700 Capitol Avenue Frankfort, Kentucky 40601

DATED: October 3, 2002

SIGNED: s/ James G. Akers
*Plaintiff-Appellant, **pro se***

ADDRESS: Post Office Box 3648
Brentwood, TN 37024

[END OF DOCUMENT]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

JAMES G. AKERS,	)	CASE NO: 5:02cv0162
	)	
Plaintiff-Petitioner,	)	JENNIFER B. COFFMAN,
	)	Judge
v.	)	
	)	Eastern District of Kentucky
	)	**FILED**
CAROLYN P. BISHOP; *et al*,	)	OCT 04 2002
	)	AT LEXINGTON
Defendants-Respondents.	)	LESLIE G. WHITMER
	)	CLERK U.S. DISTRICT COURT

RESPONSES & OBJECTIONS TO: "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS"

COMES THE PLAINTIFF-PETITIONER, James G. Akers (hereinafter "Akers'), **without counsel** in strict accordance with Title 28 U.S.C. § 1654; without acknowledging that United States District Court for the Eastern District of Kentucky, at Lexington, is one of proper venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" (hereinafter "Akers' Complaint) as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000; and in strict accordance with Rules 6(a) & 6(e) of the Federal Rules of Civil Procedure in conjunction with Local Rule 7.1(c)(1), files the following RESPONSES & OBJECTIONS TO: "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS " as served by counsel Leslie Rosenbaum and/or the law firm of Rosenbaum & Rosenbaum, P.S.C., on September 17, 2001.

1. The entire essence of the said "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS" appears to be as follows:

(A) "The Defendant, Carolyn Bishop previously filed a Motion to Dismiss on or about December 15, 2000, and an amended Motion to Dismiss and accompanying memorandum on or about January 16, 2001" [see: "MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS", D.E. #40 herein, page 1, lines 9 - 11];

(B) "Since the United States Supreme Court denied Plaintiff's writ of certiorari on June 24, 2002, this matter is ripe for a ruling by this Court on this and other Defendants' motions to dismiss" [*id.*, lines 11-13];

(C)[i] "There are three basic claims allegedly stated against Carolyn P. Bishop. [ii] The first claim under 42 U.S.C.§ 1983 can be disposed of as was done by Judge Henry R. Wilhoit, Jr., of the eastern District Court of Kentucky on May 17, 1999, when he stated, 'As has previously be established, in order to bring an action pursuant to 42 U.S.C. § 1983 against a Defendant, that Defendant must have been acting under color of state law. With regard to Defendant, Carolyn P. Bishop this complaint charges purely private conduct, conduct not reached by 42 U.S.C. §1983.' [iii] Judge Wilhoit cites and this party continues to rely on the cases of: [a] *Parratt v. Taylor*, 451 U.S. 527 (1981), overruled in part on other grounds; [b] *Daniel v. Williams*, 473 U.S. 327, 88 L.Ed. 662, 106 S.Ct. 682 (1986); [c] *Lugar v. Edmondson Oil Co.*, U.S. 922(1987); [d] *Moore v. City of Paducah*, 890 F.2d 831 (6th Cir. 1989); and [e] *Hiser v. City of Bowling Green*, 42 F.3d 382 (6th Cir. 1984) certiorari denied, 115 S.Ct. 1984 (1995). [iv] These Sixth Circuit cases and others make it clear that if a person acts on his own, [a] he or she is not a state actor as contemplated in *Lugar*, [b] acting under color of state law, [c] nor acting as a state agent, [d] nor is such specifically alleged" [*id.*, page 1, line 14 - page 2, line 4];

(D) "Further [i] the Sixth Circuit case attached to

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the brief filed on behalf of the Defendants represented by the Attorney General of Kentucky in this action makes it clear that neither Section 1983 of Title 42, nor the RICO Act can be used by a convicted felon to attack his conviction. That opinion in *Hermansen v. Chandler*, 2000 W.L. 554058 (copy attached to brief of the Commonwealth defendants).[1] [ii] In that opinion the Court makes reference to several other opinions it has written in which it states that in order to recover damages under 42 U.S.C.§1983 (or civil actions under RICO), the plaintiff must first prove that his conviction has been reversed or otherwise been eliminated. [iii] Because Plaintiff's complaint proves that his convictions still stand, [a] a cause of action under Section 1983 of Title 42 or [b] under the RICO statute becomes untenable and [c] no cause of action has been stated against Carolyn P. Bishop. [d] *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d (1994)" [***id.***, page 2, lines 5-16];

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[1] "The Defendants represented by the Attorney General's Office are Judges Thomas Clark, Rebecca Overstreet, Pamela Goodwine, and Kentucky prosecutors Lou Anna Red Corn, Cindy Schwartz and Todd Ferguson." [***id.***, page 2]

(E)[i] "Specifically with regard to 42 U.S.C. § 1985, [a] there has been no allegation in the complaint that the Plaintiff is a member of a protected class, [b] that any discriminatory acts or violations of any of his rights occurred as a result of his failure to be protected as a member of a particular class, or [c] that there is any other discriminatory class action. [ii] As in the case of *Hoai v. Vo*, 935 F.2d 308, 290 U.S.App.D.C. 142 (1991), certiorari denied 112 S.Ct. 1578, 118 L.Ed.2d 220, rehearing denied 112 S.Ct. 2007, 118 L.Ed.2d 602, Plaintiff's claim is fatally flawed as to Defendant Bishop under 42 U.S.C. §1983 and §1985(c). [iii] That case makes it clear that Plaintiff's inadequate allegations cannot be cured when the complaint [a] does not state which specific actions were under color of state law as to a particular individual, and

[b] there is a total failure to allege insidious discrimination, class based animus or any other violation relating to the alleged conspiracy to deprive Akers of equal protection of laws" [***id.***, page 2, lines 17 - page 3, line 8];

(F)[i] "It is presumed that subsection (3) of §1985 is the only one which would apply in connection with the allegations which have been made in Plaintiff's complaint against Carolyn P. Bishop. [ii] This requires a "class-based, invidiously discriminatory animus" [a] *Hoai v. Vo*, supra at 314. See also [b] *United Brotherhood of Carpenters v. Scott*, 463 U.S. 825, 77 L.Ed.2d 1049, on remand 715 F.2d 161, rehearing denied 464 U.S. 875 (1983), with regard to [c] the issue of racial or similar reason for the so called conspirators' actions" [***id.***, page 3, lines 9 - 14];

(G)[i] "*Bryant v. Commonwealth of Kentucky*, 490 F.2d 1273 (6th Cir. 1974) involved allegations that certain individuals were responsible for the initiation and encouragement of prosecution against Plaintiff and violated his civil rights under § 1983 or § 1985 because of malicious prosecutions. [ii] This seems to be the gravamen of the complaint herein. [iii] The claim was dismissed on summary judgement because the allegations did not state a claim. [a] See also *French v. Corrigan*, 432 F.2d 1211 (7th Cir. 1970), certiorari denied, 91 S.Ct. 890, 401 U.S. 915, 27 L.Ed.2d 814, in terms of [b] difficulty in stating claim under the civil rights statutes because of a conviction in state court. [c] While that was an action to attack a conviction, the case at bar is an attempt at revenge, and this should weigh in favor of its dismissal" [***id.***, page 2, line 15 - page 4, line 1];

(H) "The most persuasive case with regard to the failure to state a cause of action is the case of [i] *Kelm v. Hyatt*, 44 F.3d 415 (6thCir. 1995) in which Plaintiff attempted to sue his wife based on federal civil rights statute because the wife had obtained and enforced a CPO, which is a protective order nearly identical to the domestic violence order in place in Kentucky in the case

at bar. [a] It was held that the Plaintiff's wife was not a state actor and no viable claim could be established against her under the federal civil rights statutes with regard to violation of due process even if [b] there was service of the CPO and enforcement. [ii] There mere use by the wife of the [a] criminal statutes of the state in which she resided [b] does not constitute "state action" or [c] render her a state actor or in any way cause her participation in any state agency" [***id.***, page 4, lines 2-11];

(I) "See also the case of [i] *Offutt v. Kaplan*, 884 F.Supp. 1170 (N.D.Ill. 1995). [ii] In other words, action by a private individual such as Carolyn P. Bishop under a state statute is simply insufficient to [a] convert that party into a state actor or [b] to bring into play any civil rights claim. [c] *Clapp v. LeBouef, Lamb, Leiby and MacRae*, 862 F.Supp. ...

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...1050 (S.D.N.Y. 1994), affirmed, 54 F.3rd 765, certiorari denied, 116 S.Ct. 380, 133 L.Ed.2d 303 [***id.***, page 4, lines 12 - 16];

(J)[i] "Plaintiffs other federal cause of action relates to violation of the RICO Act, discussed briefly above. [ii] It is difficult to determine what the actual RICO allegations are, but as best Defendant, Carolyn P. Bishop can make out, the claim is that [a] Dr. Vaughn, a medical surgeon in Lexington, Kentucky, committed mail fraud by sending a bill for the surgery he performed on her as well as his other services to her insurance company for payment. [b] Carolyn P. Bishop is alleged to be equally responsible for this by virtue of being a co-conspirator in violation of 18 U.S.C.§1962 at which (sic) the offense is described. [iii] A plain reading of the statute reveals how stretched this interpretation is (sic) particularly when taking into account the definitions contained at §1961 of title 18 subsection 1 (sic) [a] defining racketeering activity as '...any act which is indictable under any of the following provisions of title

18, U.S.C. ...§1341 (relating to mail fraud)...' and then [b] requiring conspiracy of the individual. [iii] That section also requires 'a pattern of racketeering activity' requiring at least two acts of racketeering activity" [*id.*, page 4, line 17 - page 5, line 6];

(K)[i] "The law is clear that the gist of the crime of mail fraud is the use of mail in executing the scheme. *United States v. Weatherspoon*, 581 F.2d 595 (7th Cir. 1978). [ii] Then, 18 U.S.C.§1964 provides that an individual who is injured in his business or property by virtue of the 'scheme' or conspiracy may file a civil action. [iii] No injury to either is alleged. [iv] The only property mentioned is a bag of funds allegedly taken prior to the divorce, [a] an item of property that was dealt with by the releases and waivers in the settlement [b] made part of the divorce decree, and [c] referred to by Plaintiff in his complaint and 'Exhibits'. [v] Concerning to (sic) §1964, there are cases in which insurance companies have sued under RICO to recover from Plaintiffs in personal injury laws suits and their co-conspirator physicians and lawyers who have created fictitious or overstated bills for the purpose of fraudulently enhancing personal injury claims. [vi] Under this theory, if in fact Dr. Vaughn (sic) and Carolyn P. Bishop engaged in a conspiracy to fraudulently use the mail to send bills for services that were not performed, then the insurance company paying those bills would have a cause of action under RICO. [vii] Obviously, the nexus of this scheme, [a] to obtain money for Dr. Vaughn (sic), [b] from which is not alleged Carolyn P. Bishop profited, [c] has no relation to the current claim by the Plaintiff, Akers, and [d] his allegations fail to meet even a relaxed interpretation of 18 U.S.C.§1962 which would allow certain individuals who (sic) have standing to bring a civil action under §1964" [*id.*, pg. 5, line 7 - pg. 6, line 1];

(L)[i] "Many other references in the memoranda of other parties discuss the failure to properly fall under RICO, and [ii] this Defendant will not rehash those, inasmuch as [a] she has incorporated their memoranda,

including [b] any immunity issues appropriate for her as a witness" [*id.*, page 6, lines 2 - 5];

(M)[i] "As Judge Wilhoit further noted in his memoranda opinion and order referred to above, [a] once the federal claims are dismissed, [b] assuming one interprets the balance of the allegations as a malicious prosecution action, [c] this would be state cause of action. [ii][a] There would be no federal question left, [b] it being merely a pendent state claim which [c] should be dismissed as well. [iii] By way of information for this court, [a] Kentucky law requires that in an action for malicious prosecution [b] one of the essential...

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...elements of the claim is that the charges resulted in no conviction. [c] *Raine v. Drasin*, 621 S.W.2d 895 (Ky. 1981). [iv] On the face of the complaint the fact Plaintiff's criminal charges are admitted to have resulted in convictions, [v] would preclude an action under Kentucky law for malicious prosecution. [vi] Therefore, Carolyn Bishop also requests that any state claims be dismissed" [*id.*, page 6, lines 6 - 15];

(N) "Wherefore, the defendant, Carloyn P. Bishop, respectfully requests Plaintiff's claims against her be dismissed" [*id.*, page 6, lines 16 - 17].

2. Notwithstanding that the subject "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS' as served and filed by defense counsel, Leslie Rosenbaum, Esquire (hereinafter "Rosenbaum"), and the law firm of Rosenbaum & Rosenbaum, P.S.C., is: (A) substantially lacking in coherence and logic; (B) totally void of merit; (C) in blatant violation of the requirements of F.R.C.P. Rule 10(b); (D) **clearly insufficient** on its face pursuant to F.R.C.P. 8(d), 8(e)(2), & 8(f); and (E) clearly redundant, impertinent, [and] scandalous pursuant to F.R.C.P. 11 & 12(f) and should, accordingly, be ***sua sponte*** "**STRICKEN**" **in its**

entirety, Akers hereby responds and/or objects to the assertions, arguments, and misapprehended legal theorems contained therein in the same hereinabove order and as follows:

(A) **Rosenbaum asserts that**: "The Defendant, Carolyn Bishop previously filed a Motion to Dismiss on or about December 15, 2000, and an amended Motion to Dismiss and accompanying memorandum on or about January 16, 2001". **Akers responds that**: That is true and, as grounds therefore, Rosenbaum argued that (i) The United States District Court for the Middle District of Tennessee-Nashville Division did "not have jurisdiction over her person"; (ii) United States District Court for the Middle District of Tennessee-Nashville Division was one of "improper venue"; & (iii) "for insufficiency of process". Notwithstanding that **both of Bishop's said motions were "DENIED AS MOOT"** by Chief Judge Robert L. Echols in His "ORDER" of transfer and accompanying "MEMORANDUM" as entered in United States District Court for the Middle...

...District of Tennessee-Nashville Division, on September 18, 2001, **surely** Rosenbaum and Bishop do not continue to maintain that these same asserted grounds for dismissal still apply **even after the entire case has been transferred to this Honorable Court**.

(B) **Rosenbaum asserts that**: "Since the United States Supreme Court denied Plaintiff's writ of certiorari on June 24, 2002, this matter is ripe for a ruling by this Court on this and other Defendants' motions to dismiss". **Akers agrees** and staunchly maintains that **each and every one** of those said "motions to dismiss" **must, as a matter of law,** be "**DENIED**" for those reasons set forth within his respective "MOTIONS TO STRIKE" and/or "RESPONSES & OBJECTIONS" thereto as timely filed in this Honorable Court.

(C)[i] **Rosenbaum asserts that**: "There are three basic claims allegedly stated against Carolyn P. Bishop." **Akers responds that**: There are three Federal Statutes, i.e., Title 18 U.S.C. § 1964(c), Title 42 U.S.C. § 1983, & Title 42 U.S.C. §

1985(3) which provide for the federal jurisdictional bases for Akers claims asserted against Defendant-Respondent Carolyn P. Bishop **and <u>all other</u> named Defendants-Respondents**. The specific "claims" against Defendant-Respondent Carolyn P. Bishop (hereinafter "Bishop") include, **<u>but are not limited to</u>**, the following:

> <u>COUNT ONE - CONSPIRACY</u>
>
> In about mid-July, 1993, in Fayette County, Kentucky, Defendants Pamela Miller, Katherine Witt, and LFG Does 1 thru 50 (known only as that group of individual "persons" and/or "public officials" within the Lexington-Fayette Urban County Government, "associated-in-fact") jointly devised, implemented, and effectuated a "conspiracy" in violation of TITLE 42 U.S.C. § 1985(2) & (3), ***inter alia***, to unlawfully deprive that "class of persons" which included Plaintiff Akers of rights, privileges, and/or immunities secured by, ***inter alia***, the Fourth, Fifth, & Fourteenth Amendments to the United States Constitution in that manner set forth in...¶¶E-12 and corresponding FN41 thereto of Akers' Memorandum; and which said "conspiracy" ultimately resulted in a "chain conspiracy" in furtherance thereof as detailed in hereinafter "COUNTS TWO, THREE, FOUR, TWELVE, & TWENTY-TWO"; and which "chain conspiracy" ultimately resulted in commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and which "conspiracy", "chain conspiracies", ...

> ..."overt acts", and "unlawful imprisonment" ultimately resulted in injuries to Akers in his person and property- as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT TWO - CHAIN CONSPIRACY

At some time shortly following August 25, 1993, in Fayette County, Kentucky, herein **Defendants Bishop**, Fleming, Rushing, and CBT Does 1 thru 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., and herein "associated-in-fact"), jointly devised a "chain conspiracy" in violation of TITLE 18 U.S.C. § 1985(2) & (3), ***inter alia***, in the furtherance of that "conspiracy" detailed in hereinabove "Count One", to unlawfully and/or unconstitutionally deprive Plaintiff Akers of his rights, privileges, and/or immunities secured by, ***inter alia***, Article 1-Section 10 [Cl.1], & Article IV-Section 2 [Cl.1] of the United States Constitution in conjunction with the Fourth, Fifth, & Fourteenth Amendments thereto, in that manner as set forth in...¶¶E-12, E-13, E-14(d), E-16, E-17, E-23 through E-27, E-29, E-31 through E-36, E-38 through E-41, E-43, E-44, E-47, E-48, E-50(e), & E-50(f) with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and injuries to Akers in his person and property as are detailed in hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN".

COUNT FIVE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, October 28, 1994, in Fayette County and/or Jessamine County, Kentucky, the **Defendants Bishop**, Fleming, Rushing, CBT Does 1 through 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., "associated-in-fact"), Layne, Shannon, Kelly, SCC Does 1 through 50 (known only as that group of "persons" at Southland Christian Church of Lexington, Inc., and "associated-in-fact"), collectively and in concert each with another, with a common

scheme and purpose, devised, implemented, and effectuated an intentional course of conduct in furtherance of hereinabove "COUNTS TWO through FOUR", with the intent to deprive Plaintiff Akers of his rights, privileges, and immunities secured by, ***inter alia***, Article I-Section 9 [Cl. 1], Article IV-Section 2 [Cl. 1], of the United States Constitution and the Fourth, Fifth, & Fourteenth Amendments thereto and, in addition thereto, ***inter alia***, Article 1, Sections 3, 8, & 14 of the Constitution of Tennessee, by committing specific "overt acts" in furtherance thereof and in the manner as set forth in...¶¶E-51, E-54, E-56 through E-58, & E-61 through E-68 and all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in the "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and those injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT ELEVEN - UNLAWFUL IMPRISONMENT

As the **proximate result** of those "conspiracies" and "chain conspiracies" detailed in hereinabove "COUNTS ONE through FOUR", and those "overt acts" in furtherance thereof as detailed in hereinabove "COUNTS FIVE through TEN", Akers was unlawfully...

...imprisoned an aggregate of **SEVEN HUNDRED TWENTY-EIGHT (728) DAYS** in custody of the Fayette County [Kentucky] Sheriff, Davidson County [Tennessee] Sheriff, and Kentucky Department of Corrections, respectively, and thereby injured in his person and in his property in that manner detailed in...¶¶122(b), 125, & 126 of Akers Memorandum, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT TWELVE - CHAIN CONSPIRACY/COVER-UP

Beginning on, or about, February 27, 1998, and, then, continuing through July 7, 2000, in Fayette County, Jessamine County, and/or Franklin County, Kentucky, **Defendants Bishop**, Fleming, CBT Does 1 through 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., "associated-in-fact"), Layne, Shannon, SCC Does 1 through 50 (known only as a group of "persons" at Southland Church of Lexington, Inc., and "associated-in-fact"), Vaughan, Red Corn, Overstreet, & Ferguson engaged in an intentional and continuing course of conduct in the furtherance of those "conspiracies" and/or "chain conspiracies" as detailed hereinabove "COUNTS ONE through FOUR", and those "overt acts" in furtherance thereof as detailed in hereinabove "COUNTS FIVE through TEN", by committing additional "overt acts" in furtherance and covert concealment thereof as detailed in...¶¶E-97, E-98, E-99, E-103, E-104, E-106, E-107, E-108, E-110.I through E-110.X, E-111 through E-117, E-119, & E-121 and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which such "overt acts" resulted in the further "unlawful imprisonment" of Akers as detailed in hereinabove "COUNT FOURTEEN" and those further injuries to Akers in his person and his property detailed in hereinafter "COUNTS TWENTY-FIVE & TWENTY-SIX", all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT FOURTEEN - UNLAWFUL MPRISONMENT

As the **proximate result** of those "conspiracies" & "chain conspiracies" detailed in hereinabove "COUNTS ONE through FOUR"; and "overt acts" in the furtherance thereof as detailed in hereinabove "COUNTS FIVE, SIX, SEVEN, EIGHT, TEN, & TWELVE", **Akers was again "unlawfully imprisoned"** in an aggregate of **SIX HUNDRED SEVEN (607) DAYS** in custody of the Fayette County [Kentucky] Sheriff and, subsequently, the Kentucky Department of Corrections,

and thereby still further injured in his person and his property in that manner as detailed in ¶¶122(b), 125, & 126 of Akers' Memorandum, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT FIFTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", **Defendants Bishop**, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of "persons" at the Southland Christian Church of Lexington, Inc., "associated-in-fact"), collectively and in concert each with another, with common scheme and purpose, devised, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in subparagraphs (a) through (d) hereinafter; and used income derived therefrom to acquire, maintain interests in, and/or participate in the conduct of the affairs of the "enterprises" known as Southland Christian Church of Lexington, Inc., and...

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..."Association-in-fact" (comprised of all the hereinabove "persons" named as "Defendants" herein, both jointly and severally, and "associated-in-fact") through a "pattern of racketeering activity"; the "activities" of which said "enterprises" having and maintaining affects on both "interstate commerce" and "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific said "predicate acts" are as follows:

(a) On or about May 12, 1994, in Fayette County, Kentucky, **Defendants Bishop**, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of "persons" at Southland Christian Church of Lexington, Inc., and herein

"associated-in-fact"), collectively and in concert each with another, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the commission of "kidnaping" (in violation of Title 18 U.S.C. § 1201 and K.R.S. 508.130) in preparation for the hereinafter predicate acts depicted "COUNT FIFTEEN(b) & (c)" in that manner as set forth in...¶¶E-31, E-32, E-34, & E-38 together with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which such "predicate act" ultimately resulted in injuries to Akers in his businesses and property as detailed in...¶¶125 & 127 of Akers' Memorandum;

(b) From about May 12, 1994 until June 29, 1994, in both Fayette County, Kentucky, Jessamine County, Kentucky, and/or Centre City, Minnesota, **Defendants Bishop**, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of persons at the Southland Christian Church of Lexington, Inc., herein "associated-in-fact"), acting collectively and in concert one with the other, in covert preparation for that further predicate act depicted as hereinafter "COUNT FIFTEEN(c)", and with common scheme and purpose, devised, implemented, effectuated, or otherwise participated in, the predicate act of "unlawful imprisonment" of Akers (in violation of K.R.S. 509.020 and, therefore, as well in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner detailed in...¶¶E-31, E-32, E-34, & E-38 with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which "predicate act" ultimately resulted in injuries to Akers in his person, businesses, and property further detailed in...¶¶125 & 127 of Akers' Memorandum;

(c) On, or about, June 28, 1994, in Fayette and/or Jessamine County, Kentucky, the

Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of "persons" at the Southland Christian Church of Lexington, Inc., "associated-in-fact"), acting collectively and in concert each with another, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the additional predicate act of "theft by unlawful taking or disposition" of certain property of Akers and Coleman/Akers & Akers, Inc. (C/AA) valued in excess of $300.00 (in violation of K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner as is set forth in...¶E-43 together with FN55 & FN56 thereto, respectively, of Akers' Memorandum; and which said "predicate act" ultimately resulted in injuries to Akers in his businesses and property as are detailed in...¶¶125 & 127 of Akers' Memorandum; &

(d) On or about June 28, 1994, in Fayette County, Kentucky, and Jessamine County, Kentucky, **Defendants Bishop**, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of "persons" at Southland Christian Church of Lexington, Inc., and "associated-in-fact"), acting collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or participated in, the further predicate act of "tampering with physical evidence" (in violation of Title 18 U.S.C. § 1512 & K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner set forth in...¶E-43 together with corresponding FN55 & FN56, respectively, of Akers' Memorandum; and which "predicate act"

ultimately resulted in those injuries to Akers in his person, property, and businesses as detailed in...¶¶125 & 127 of Akers' Memorandum.

COUNT SIXTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", **Defendants Bishop**, Fleming, and Vaughan, acting collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or participated in and, thereby, committed those two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in subparagraph (a) hereinafter; used income derived therefrom to acquire and/or maintain interests in and/or participate in conduct of the affairs of the "enterprises" known as "Dr. John J. Vaughan, M. D.", and the "Association-in-fact" (comprised of all those hereinabove "persons" named as "Defendants" herein, both jointly and severally, corporately and individually, and "associated-in-fact") through such a "pattern" of "racketeering activity"; and the "activities" of those said "enterprises" having maintained affects on both "interstate commerce" and "foreign commerce" at all times relevant hereto, all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) Beginning on, or about, June 16, 1994, in Fayette County, Kentucky, **Defendants Bishop**, Fleming, and Vaughan, proceeding in concert each with the other, with common scheme and purpose, devised, effectuated, implemented, or otherwise participated in, commission of the predicate acts of "wire fraud" (in violation of Title 18 U.S.C. § 1341) and "mail fraud" (in violation of Title 18 U.S.C. § 1343) in that manner as set forth in...¶¶E-2, E-8, E-28, E-35, E-36, E-41, E-42, E-48, & E-48 together with all corresponding footnotes thereto, respectively, of

Memorandum; and which such "predicate acts" resulted in injuries to Akers' businesses and property as detailed in...¶¶125 & 127 of Akers' Memorandum.

COUNT SEVENTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, and Kelly, collectively and in concert each with the other, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated...

...in hereinafter subparagraph (a); in attempt to derive funds therefrom for use in acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known as the "Association-in-fact" (comprised of all hereinabove "persons" named as "Defendants" herein, both jointly and severally, both corporately and individually, and "associated-in-fact") through such a "pattern" of "racketeering activity"; the "activities" of which said "enterprises" having had and maintained affects on "interstate and foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) On, or about, September 23, 1994, in Fayette County, Kentucky, **Defendants Bishop**, Fleming, and/or Kelly, collectively and in concert each with another, with common scheme and purpose, devised, effectuated, or otherwise participated in the commission of "forgery in the second degree" (in violation of K.R.S. 516.030),

and "theft by extortion" (in violation of K.R.S. 514.040), **both being violations of TITLE 18 U.S.C. §§ 1961 & 1962**, in that manner set forth in...¶¶E-50 together with FN62 of Akers' Memorandum; and which said "predicate acts" resulted in injuries to Akers' businesses and property as detailed in...¶¶125 & 127 Akers' Memorandum.

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COUNT EIGHTEEN - R.I.C.O. VIOLATIONS

In the course thereof the hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', **Defendants Bishop** & Rushing, acting in concert each with another, with a common scheme and purpose, devised and/or effectuated and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in subparagraph (a) hereinafter, in an overt attempt to use income derived therefrom in the acquisition of, maintaining interests in, and/or otherwise participating in conduct of the affairs of the "enterprise" known only as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, jointly and severally, and "associated-in-fact") through a "pattern" of "racketeering activity"; the "activities" of which said "enterprise" both having and maintaining affects on "interstate commerce" and "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) Beginning on, or about, October 23, 1994, via interstate telephonic communications between Fayette County, Kentucky, and Williamson County, Tennessee, **Defendants Bishop** and Rushing, acting in concert each with the other, with a common scheme and purpose,

devised, effectuated, and/or otherwise participated in commission of the two and distinctly separate "predicate acts" of "blackmail" (in violation of Title 18 U.S.C. § 873); **and** "extortion" (in violation of Title 18 U.S.C. § 875), **both** being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶E-56 and FN67 of Akers' Memorandum; and which "predicate acts" resulted in injuries to Akers' businesses and property as detailed in ...¶¶125 & 127 of Akers' Memorandum.

COUNT NINETEEN - R.I.C.O. VIOLATIONS

In the course thereof the hereinabove "COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN through EIGHTEEN', the Defendant Red Corn joined in those "chain conspiracies", "conspiracies', and "overt acts" in the furtherance and concealment thereof, on, or about, November 1, 1995, in Fayette County, Kentucky and/or Jessamine County, Kentucky; and acting both independently and in concert with those other Defendants named herein, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in hereinafter subparagraph (a) through (d); having derived funds therefrom and attempting to derive additional funds therefrom for her use in the acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known herein only as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, both jointly and severally, as herein "associated-in-fact") through such a "pattern" of "racketeering activity"; and the "activities" of which having affects on "interstate and/or foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) On, or about, November 6, 1995, in Fayette County, Kentucky, Defendant Red Corn collaborated with, unlawfully assisted, influenced, and/or directed **Defendant Bishop** in fraudulent testimony before the Fayette County [Kentucky] Grand Jury and, therefore, acted in concert with Bishop, with a common scheme and purpose, in effectuating and/or participating in commission of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), **both** being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶¶E-81 & E-82 with FN81 & FN82 thereto, respectively, of Akers' Memorandum; and which "predicate acts" ultimately resulted in injuries to Akers in his businesses and in his as detailed in...¶¶ 125 & 127 of Akers' Memorandum;

COUNT TWENTY-TWO - FINAL OVERT ACTS/ COVER-UP

On, or about, March 30, 2000, in Fayette County, Kentucky, the **Defendants Bishop**, Fleming, Layne, and Witt continued in those "conspiracies" and "chain conspiracies" as detailed in hereinabove "COUNTS TWO, THREE, & FOUR"; and "overt acts" in the furtherance and concealment thereof as detailed in "COUNTS FIVE, SIX through TEN, & THIRTEEN"; and in the concealment of those "R.I.C.O. Violations" as detailed in hereinabove "COUNTS FIFTEEN through TWENTY-ONE", by conspiring to, participating in, and/or otherwise effectuating schemes to further deprive Akers of privileges and immunities secured by, ***inter alia***, Article I-Section 9 [Cl. 2], Article I-Section 10 [Cl. 1], Article IV-Section 2 [Cl. 1], and the First, Fourth, Fifth, Sixth, & Fourteenth Amendments of/to the Constitution of the United States of America and Article 1, Sections 8 & 10 of the Constitution of Tennessee; were

joined in that "conspiracy" and "final overt acts" in furtherance thereof by Defendant Goodwine on April 13, 2000, in that manner set forth in...¶E-118 together with FN133 thereto, respectively, of Akers' Memorandum; and which "final overt acts" further enhanced injuries to Akers in his...

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...person, property, and businesses as detailed in...¶127 of Akers' Memorandum; all in violation of Title 42 U.S.C. §§ 1983 and 1985(3), ***inter alia***.

COUNT TWENTY-THREE - FINAL COVER-UP

On, or about, May 19, 2000, in Fayette County, Kentucky, the **Defendants Bishop**, Red Corn, and Overstreet, ***inter alia***, conspired to covertly "conceal" those "conspiracies" and "chain conspiracies" as detailed in hereinabove "COUNTS ONE, TWO, THREE, & FOUR"; "overt acts" in the furtherance thereof as detailed in "COUNTS FIVE, SIX through TEN, & THIRTEEN"; "unlawful imprisonment" of Akers as detailed in hereinabove "COUNTS ELEVEN & FOURTEEN"; **and** "R.I.C.O. Violations" detailed in hereinabove "COUNTS FIFTEEN through TWENTY-ONE", in that manner as detailed in...¶¶E-121 through E-124 with FN135 & FN136, respectively, of Akers' Memorandum; and which **additional** **"overt acts"** further enhanced the injuries to Akers in his person, property, and businesses as detailed in... ¶126 & 127 of Akers' Memorandum; all in violation of Title 42 U.S.C. §§ 1983 and 1985(3). [**see**: D.E. #1 herein, pages 96 - 123 thereof, **edited for clerical errors and brevity only**]

(C)[ii] **Rosenbaum argues that**: "The first claim under 42 U.S.C.§ 1983 can be disposed of as was done by Judge Henry R. Wilhoit, Jr., of the Eastern District Court of Kentucky on May 17, 1999, when he stated, 'As has previously be established, in order

to bring an action pursuant to 42 U.S.C. § 1983 against a Defendant, that Defendant must have been acting under color of state law. With regard to Defendant Carolyn P. Bishop, **this complaint** charges purely private conduct, conduct not reached by 42 U.S.C. §1983'" (emphasis added). **Akers responds that**: the operative language here is "**this complaint**", i.e., referring to Akers' previous civil action styled "*James G. Akers v. Commonwealth of Kentucky, et al*" [Civil Action No. 5:99cv0173 herein] filed by Akers in May of 1999, **while still unlawfully imprisoned** at Eastern Kentucky Correctional Complex, with **extremely limited resources**, and **still subject to the Prison Litigation Reform Act** (28 U.S.C. 1915A) & **McGore v. Wrigglesworth, 114 F.3d, 601, 607-8 (6th Cir. 1997)**. Moreover, Judge Wilhoit's specific language within his said "MEMORANDUM OPINION AND ORDER" of May 17, 1999, makes it clear that he construed Akers' then case to be **limited** to the jurisdictional bases provided within Title 42 U.S.C. §1983 **and/or** a "state tort claim of malicious...

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...prosecution", *viz*, as follows:

> "The Plaintiff does not set forth the jurisdictional basis of this document entitled 'Complaint' other that to refer to it as a 'civil action'. Accordingly, it is construed this action is brought pursuant to 42 U.S.C. §1983. It is further construed the plaintiff is attempting to assert a state tort claim of malicious prosecution."

Clearly, those deficiencies have been remedied "in spades" within Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" filed as Case No. 3:00cv1142 in United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000 [see also: hereinabove ¶ 2.(C)(i)].

(C)[iii] **Rosenbaum further argues that**: "Judge Wilhoit

cites and this party continues to rely on the cases of: [a] *Parratt v. Taylor*, 451 U.S. 527 (1981), overruled in part on other grounds; [b] *Daniel v. Williams*, 473 U.S. 327, 88 L.Ed. 662, 106 S.Ct. 682 (1986); [c] *Lugar v. Edmondson Oil Co.*, U.S. 922 (1987); [d] *Moore v. City of Paducah*, 890 F.2d 831 (6th Cir. 1989); and [e] *Hiser v. City of Bowling Green*, 42 F.3d 382 (6th Cir. 1984) certiorari denied, 115 S.Ct. 1984 (1995)" and **Akers responds as follows**:

(a) A thorough review of *Parratt v. Taylor* reveals that **that case is applicable to Akers' present case – but only with respect to its specific language as follows**:

> "The United States District Court for the District of Nebraska entered summary judgement for prisoner, and prison officials appealed.[2] The United States Court of Appeals for the Eight Circuit, 620 F.2d 307, affirmed, and certiorari was granted. The Supreme Court, Justice Rehnquist, held that although prisoner had been deprived or property under color of state law, **he did not state claim for relief under section 1983, as he did not sufficiently allege violation of due process clause of the Fourteenth Amendment**.[3]

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[2] Since Akers is no longer "in custody" **and should never have been** in light of the specific facts underlying his criminal convictions as detailed within his previous pleadings in the herein case, the herein noted language is cited for "background" purposes with respect to ***Parratt v. Taylor* only**.

[3] Obviously, Akers' herein case is an entirely different matter inasmuch as Akers has both "sufficiently alleged" **and shown** "violation of due process clause of the Fourteenth Amendment", ***inter alia*** [see, e.g., hereinabove ¶ 2(C)(i)].

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[4] Constitutional Law - Fundamental requirements of due process is opportunity to be heard, and it is an opportunity which must be granted at meaningful time and in meaningful manner.

*529 Justice Rehnquist delivered the opinion of the Court.....Respondent claimed that his property was negligently [4] lost...in violation of his rights under the Fourteenth Amendment to the United States Constitution. More specifically, he claimed that he had been deprived of property without due process of law.

[FN2] The Court recognized as much in *Monroe v. Pape*, U.S. 167, 81 S. Ct. 473, 5 L.Ed.2d 492 (1961), when we explained after extensively reviewing the legislative history of § 1983, that.....*[i]t is abundantly clear that one reason the [Title 42 U.S.C. §1983] legislation was passed was to **afford a federal right in federal courts because**, by reason of prejudice, passion, neglect, intolerance or otherwise, ...the claims of citizens to **the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth *535 Amendment might be denied by the state agencies**." *Id.*, at 180, 81 S.Ct., at 480." (***id.***, emphasis and clarification added)

(b) A thorough review of *Daniel v. Williams* reveals that **that case is, as well, applicable to Akers' present case – but only with respect to its specific language as follows**:

"It is not enough to note [that the two prisoners] rely on the Due process Clause of the Fourteenth Amendment, for that clause is the source of three different kinds of constitutional protection. **First**, it incorporates specific protections defined in the Bill of Rights. Thus, **the State, as well as the Federal Government must comply with the commands in the First and Eighth Amendments**, so too, **the State must respect the guarantees in the Fourth, Fifth, [FN5] and Sixth Amendments**. ** 678 **Second**, it contains a substantive component, sometimes referred to as "substantive due process," which **bars certain arbitrary government actions "regardless of the fairness of the procedures used to implement them**." Ante, at 665. **Third, it is a guarantee of fair procedure**, sometimes

referred to as "procedural due process": **the State may not...imprison...a defendant without giving him a fair trial, nor may it take property without providing appropriate procedural safeguards**.

[FN5] *Benton v. Maryland*, 395 U.S. 784, 89 S.Ct. 2056, 23 l.Ed2d 707 (1969) (**right to protection from double jeopardy applies to States**.)

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[4] There is no evidence that the element of "negligence" was, **in any way whatsoever**, involved in the injuries inflicted upon Akers in his person, property, and businesses by these Defendants-Respondents. Rather, the facts of this case make it **abundantly clear that these Defendants so acted unlawfully with unmistakable "intent", "malice of forethought", and "conspiracy", *inter alia***.

The type of Fourteenth Amendment interest that is implicated has important effects on the nature of the constitutional claim and the availability of § 1983 relief. If the claim is in *338 the first category (a violation of one of the specific constitutional guarantees of the Bill of Rights), **a plaintiff may invoke § 1983 regardless of the availability of a state remedy**.

Similarly, if the claim is in the second category (a violations of the substance component of the Due Process Clause), **a plaintiff may also invoke § 1983 regardless of the availability of a state remedy**.

A claim in the third category –a procedural due process claim –is fundamentally different. In a procedural due process claim, it is not the deprivations of property or liberty that is unconstitutional; **it is the deprivation of property or liberty *without due process of law* – without adequate procedures**." (*supra*, emphasis and clarification added)

(c) Likewise, a thorough review of *Lugar v. Edmondson Oil Co.* reveals that **that case is applicable** to Akers' present case – but, as well, **only with respect to its specific language as follows**:

> "The Supreme Court, Justice White, held that debtor was deprived of his property through state action, corporate creditor and its president having acted under color of state law in participating in that deprivation, and this debtor presented valid cause of action under 1871 civil rights statue insofar as he challenged constitutionality of Virginia statute...
>
> [2] **Joint action with state official to accomplish prejudgement deprivation of constitutionally protected property interest will support claim against private party under 1871 civil rights statute**. U.S.C.A. Const.Amend 14; 42 U.S.C.A§ 1983, Va. Code 1950, §8.01-533.
>
> [3] In action brought against state official under 1871 civil rights statute, **statutory requirement of action "under color of state law" and the "state action" requirement of Fourteenth Amendment are identical**. U.S.C.A.Const.Amend, 14; 18 U.S.C.A. § 242; 42 U.S.C.A. § 1983.
>
> [4] **Civil Rights Act of 1871 was passed for express purpose of enforcing provisions of the Fourteenth Amendment**. U.S.C.A.Const.Amend. 14; 42 U.S.C.A. § 1983; Civil Rights Act of 1871, § 1,17 Stat. 13.
>
> [6] Although under color of state law requirement does not add anything not already included with state action requirement of Fourteenth Amendment, **1871 civil rights statue is applicable to other constitutional provisions and statutory provisions that contain no state action requirement**. U.S.C.A.Const.Amend. 14, 15, 42 U.S.C.A. § 1983.

> [9] Private misuse of state statute does not describe conduct that can be attributed to state, **but procedural scheme created by statute is product of state action** and is thus **subject to constitutional restraints and property may be addressed in action under 1871 Civil Rights Act**, if second element of state action requirement is met as well; 42 U.S.C.A. § 1983; Va. Code 1950, § 8.01-533." (***id.***, emphasis and clarification added)

(d)(i) Further, a thorough reading of *Moore v. City of Paducah* reveals that **that case is also applicable** to Akers' present case – **specifically with respect Defendant-Respondent Pamela Miller and/or the Lexington-Fayette Urban County Government** – but, yet again, **only with respect to its specific language as follows**:

> "**It is well settled that municipalities and their local government units are 'persons' under [42 U.S.C.A. § 1983], and are, therefore, subject to suit**. *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 98 S. Ct. 2018, 56 L.Ed.2d 611 (1978)(**overruling *Monroe v. Pape***, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961). The *Monell* Court reasoned that **municipalities were not free to violate constitutional rights and that the legislative history did not justify excluding municipalities from liability**. Id. 436 U.S. at 700-01, 98 S.Ct. at 2040.
>
> Section 1983 does not reach purely private conduct, but is aimed at action taken under color of state law. See *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed. 2d 420 (1981) (overruled) in part on the grounds, *Daniel v. Williams*,474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986). **The traditional definition**[5] **of this language** requires that the defendant have 'exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.' *West v. Adkins*, 487 U.S. 42, 108 S.Ct. 2250, 2255, 101 L.Ed. 1368 *reh'g denied*. 314 U.S. 707, 62 S.Ct. 51, 86 L.Ed 565 (1941).

However, the modern approach treats 'under color of state law' and 'state action' as coterminous. 'If the challenged conduct of [Green] constitutes state action as delimited by ... prior decisions, then that conduct [is] also action under color of state law and will support a suit under § 1983.' *Lugar v.* Edmondson *Oil Co.*,457, U.S. 922, 935, 192 S.Ct. 2744, 2752, 73, L.Ed.2d 482 (1983); *see also West v. Atkins*, 108 S.Ct. At 2255.[FN6] 192 S.Ct. 2744, 2752, 73, L.Ed.2d 482 (1983); *see also West v. Atkins*, 108 S.Ct. At 2255.[FN6]

FN6. **The importance of these decisions** is evidenced by the fact that **non-§ 1983 state action cases are now authoritative in § 1983 cases**.

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[5] Apparently, it is upon this "traditional" and obsolete "definition" which Bishop and/or Rosenbaum erroneously and/or superficially rely in their herein "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS".

In *United States v. Price*, 383 U.S. 787, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966), the Supreme Court addressed the 'color of law' language under 18 U.S.C. § 242, the criminal counterpart of 42 U.S.C. § 1983. [FN9] The *Price* Court articulated that '**[t]o act under color of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents.**" *Id* at 794, 86 S.Ct. At 1157. **Thus, a private party may conspire with the state and be liable under § 1983**. See, e.g. *Adickes v. Kress & Co.*,398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970).

The standard for proving a civil conspiracy was set forth in *Hooks v. Hooks*, 771 F.2d 935(6th Cir. 1985): **A civil conspiracy is and agreement between two or more persons to injure another by unlawful actions. Express**

> **agreement among all the conspirator's <u>is not necessary</u>** to find the existence of a civil conspiracy. Each conspirator need not have known all of the details of the illegal plan or all of the participants involved. **<u>All that must be shown</u>** is that there was a single plan, that the alleged conspirator shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant. Id. At 943-44." (***supra.***, emphasis and clarification added)

(d)(ii) Thus, Defendant-Respondent Carolyn P. Bishop and her legal counsel, Leslie Rosenbaum and/or the law firm of Rosenbaum & Rosenbaum **<u>could not likely have selected</u> a case to cite** (in addition to those already cited within Akers' previous pleadings in this case) **which <u>more clearly supports</u> the Constitutional, Statutory, and/or Common Law bases for Akers' claims herein.**

(e)(i) And, finally, Bishop and/or Rosenbaum cite the case of *Hiser v. City of Bowling Green*, 42 F.3d 382 (6th Cir. 1984) cert. denied, 115 S.Ct. 1984 (1995) as authority for dismissal of Bishop from Akers' herein civil action. **<u>Not surprisingly</u>, however, that case <u>actually enhances</u> Akers' position <u>as do those cases cited</u> in hereinabove ¶¶ 2.(C)(iiii)(a) through (d).** Moreover, *Hiser* provides **<u>unmistakable</u> bases for "DENIAL"** of the subject "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS" pursuant to the specific language contained therein at page 2, [Opinion] II, i.e., as follows:

> "**<u>In deciding a motion to dismiss</u>**,' the complaint is construed in the light **<u>most favorable to plaintiff</u> and its allegations are <u>taken as true</u>**.' 5A CHARLES A. ...

...WRIGHT & ARTHUR R. MILLER FEDERAL PRACTICE AND PROCEDURE § 1357 (2D Ed. 1990). **<u>A complaint will not be</u>**

dismissed for failure to state a claim '**unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief**'. *Conley v. Gibson*, 355 U.S. 41 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d. 80 (1957)." (***supra.***, emphasis and clarification added)

(e)(ii) This Honorable Court is hereby asked to once again consider the fact that **not even a single Defendant has attempted to controvert even a single averment** inasmuch as **they can not do so without placing themselves in peril of yet further sanctions and/or penalties** under Federal Law. **Again, the "merits" of Akers' herein case are not even arguable** and, based upon the specific language within those cases cited in hereinabove ¶¶ 2.(C)(iiii)(a) through (e)(i), the subject "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS" must be "**DENIED**".

(D)(i) **Rosenbaum argues that**: "...the Sixth Circuit case attached to the brief filed on behalf of the Defendants represented by the Attorney General of Kentucky in this action makes it clear that neither Section 1983 of Title 42, nor the RICO Act can be used by a convicted felon to attack his conviction. That opinion in *Hermansen v. Chandler*, 2000 W.L. 554058 (copy attached to brief of the Commonwealth defendants)." **Akers responds that**: In reality, Rosenbaum is only attempting to re-argue the very same principles set forth within Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364; Rooker, et al., v. Fidelity Trust Co., et al., 263 U.S. 413, 44 S.Ct. 149; and District of Columbia Court of Appeals, et al., v. Marc Feldman and Edward J. Hickey, Jr., 460 U.S. 462, 103 S.Ct. 1303 - **notwithstanding** that Akers' various previous pleadings herein have **clearly shown that those "authorities" are woefully insufficient, misapprehended, and misapplied** with respect to dismissal of any of Akers' claims against **any of these Defendants-Respondents,** i.e., as follows:

HECK V. HUMPHREY [see, e.g., D.E. #78 at ¶ (2)(B).III, page 10, as follows]

"The Defendants Clark, Overstreet, Goodwine, Red Corn, Schwartz, and Ferguson rely upon **Heck v. Humphrey**, 512 U.S. 477, 114 S.Ct. 2364, as authority for dismissal of Akers' Complaint [see Docket Entry #38 at page 16]. Defendants Witt, Fleming, **Layne**, **Shannon**, Bishop, and Rushing assert essentially the same in their individual motions and memoranda [Docket Entry #43 at (Argument) I; Docket Entry #31 at ¶ 9; Docket Entry #35, pages 16 & 17; Docket Entry #43 at (Argument) I; Docket Entry #63 at page 9, lines 1 thru 3; & Docket Entry #71 at ¶, respectively]. **The Defendants completely miss the point of *Heck v. Humphrey*.**

Heck was convicted of 'voluntary manslaughter' for killing his wife. His conviction has never been reversed and, in fact, was affirmed by Indiana's Court of Appeals and Supreme Court. Heck remained 'in custody' during the entire time of his civil action pursuant to Title 42 U.S.C. § 1983. **There was no question as to whether the state of Indiana had both 'personal jurisdiction' and 'subject matter jurisdiction'** over Heck and his prosecutions. Therefore, **the sole remedy available to Heck was habeas corpus under Federal law.**[6]

By contrast, Akers did not 'kill' **anyone**. In fact, there is no legitimate evidence that Akers did **anything** to Bishop other than slap her for striking him in his groin - under the influence of 'extreme emotional disturbance' as the result of Bishop's previous abuse of Akers' grandchildren. **The only injury to Bishop which can be directly attributed to Akers was a 'slightly-swollen lip'** and there is no legitimate evidence that Akers **'intended' to cause Bishop even that injury.**[7] Akers' conviction for 'First Degree Assault' has been reversed **twice by the Kentucky Court of Appeals as unlawful**. Akers is no longer 'in custody' and **should never have been**. Habeas corpus is no longer a remedy available to Akers and only Title 42 U.S.C. § 1983 remains so available. Moreover, ***Heck v. Humphrey* does not even address any claims comparable to those**

asserted by Akers pursuant to Titles 18 U.S.C. § 1961, et seq, & Title 42 U.S.C. § 1985. ***Heck v. Humphrey*** **just simply does not apply to Akers' herein case** except with respect to its language as follows:

[3] In general, exhaustion of state remedies is not a prerequisite to action under § 1983, even in action by state prisoner. 42 U.S.C.A. 1983.

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[6] **Akers instant case is an entirely different matter** inasmuch as Akers is no longer "in custody" and, therefore, **the Federal habeas corpus statute no longer applies**.

[7] **Even under Kentucky law (particularly K.R.S. 508.040)**, Akers' so-called act of "assault" of Bishop was punishable for only **a maximum fine of $250 and/or 90-day sentence in the county jail** [see "OFFENSE, PENALTY AND BAIL SCHEDULE", APPENDIX A, Kentucky Rules of Court, 1995, West Publishing Company, November 1, 1994] absent unconstitutional "***ex post facto***" enhancement under disguise of implementing, evolutionizing, and/or 'testing the mettle' of Kentucky's newly-enacted/enhanced 'Domestic Violence & Abuse' laws **and, only then, if proceedings had been initiated within the one (1) year statutory period required by K.R.S. 500.050(2).**" [see, e.g., Akers' "Motion for Reconsideration", as filed in the Sixth Circuit of Appeals on December 10, 2001, FN8, page 12 thereof]

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[5] Preiser, which held that habeas corpus is exclusive remedy for state prisoner who challenges fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within literal terms of § 1983; did not create [an] exception to "no exhaustion" rule of § 1983; it merely held that certain claims by state prisoners are not cognizable under that provision and must be brought in habeas corpus proceedings, which do not contain exhaustion requirement. 42 U.S.C.A § 1983; 28 U.S.C.A. § 2254.

[6] Common-law cause of action for malicious prosecution, unlike related cause of action for false arrest

and imprisonment, permits damages for confinement imposed pursuant to legal process.

[7] Successful malicious prosecution plaintiff may recover in addition to general damages, compensation for any arrest or imprisonment, including damages for discomfort or injury to his health, or loss of time and deprivation of society.

[11] Favorable termination of prior proceedings is not element of abuse of process cause of action.

[12] Gravamen of tort of abuse of process is not wrongfulness of prosecution, but some extortionate perversion of lawfully initiated process to illegitimate ends.

[18] If district court determines that § 1983 plaintiff's action, even if successful, will not demonstrate invalidity of any outstanding criminal judgement against plaintiff, action should be allowed to proceed, in absence of some other bar to suit. 42 U.S.C.A. § 1983.

[22] State courts are bound to apply federal rules in determining preclusive effect of federal-court decisions on issues of federal law.

CONCURING OPINION

Justice SOUTER, with whom Justice BLACKMUN, Justice STEVENS, and Justice O'CONNER join, concurring in the judgement.

FN3. Some of the traditional common-law requirements appear to have liberalized over the years, see Prosser and Keeton 882 ("There is a considerable minority view which regards the conviction as creating only a presumption, which may be rebutted by any competent evidence showing that probable cause for the prosecution did not in fact exist"), strengthening the analogy the Court draws. ...[The] **Reconstruction-era common law recognizes a limited exception to the rule denying a malicious prosecution plaintiff benefit of the invalidation of his conviction: an exception for**

convictions "obtained by some type of fraud." (emphasis added) Ante, at 2371, n. 4 (citing *Crescent City Live Stock Co. v Butcher's Union Slaughter-House Co.*, 120 U.S. 141, 151, 7 S.Ct. 472, 477, 30 L.Ed. 614 (1887) *Preiser v. Rodriguez*, 411 U.S. 475 93 S.Ct.1827, 36 L.Ed.2d 439 (1973) e.g., Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) Preiser, Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) Wollf v. McDonnel, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) ante, *498 at 2369-2370.

FN4. ...If...individuals...like state prisoners, were required to show the prior invalidation of their conviction or imprisonment, the result would be to deny any federal forum for claiming deprivation of federal rights to those who cannot first obtain a favorable state ruling. The reason, of course, is that **individuals not "in custody" cannot invoke**...

...**federal habeas jurisdiction, the only statutory mechanism besides § 1983 by which individuals may sue state officials in federal court for violating federal rights**. That would be an untoward result. ...*501 It is one thing to adopt a rule that forces prison inmates to follow the federal habeas route with claims that fall within the plain language of § 1983 when that is necessary to prevent a requirement of the habeas statute from being undermined. That is what the Court did in *Preiser v. Rodriguez*, 411 U.S., at 489-492, 93 S.Ct., at 1836-1838, and that is what the Court's rule would do for state prisoners. Harmonizing § 1983 and the habeas statute by requiring a state prisoner **2380 seeking damages for unconstitutional conviction to establish the previous invalidation of his conviction does not run afoul of what we have called, repeatedly, "[t]he very purpose of" § 1983: "to interpose the federal courts between the States and the people, as guardians of the people's federal

rights." *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972); see also Pulliam v. Allen, 466 U.S. 522, 541, 104 S.Ct. 1970, 1980-1981, 80 L.Ed.2d 565 (1984) *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972); Patsy v. Board of Regents of Fla., 457 U.S. 496, 503, 102 S.Ct. 2557, 2561, 73 L.Ed.2d 172 (1982). A prisoner caught at the intersection of § 1983 and the habeas statute can still have his court; and, depending on the circumstances, he may be able to obtain § 1983 damages. It would be an entirely different matter, however, to shut off federal courts altogether to claims that fall within the plain language of § 1983. "[I]rrespective of the common law support" for a general rule disfavoring collateral attacks, the Court lacks the authority to do any such thing absent unambiguous congressional direction where, as here, reading § 1983 to exclude claims from federal court would run counter "to § 1983 history" and defeat the statute's "purpose." Wyatt v. Cole, 504 U.S., at 158, 112 S.Ct., at 1828. Consider the case of a former slave framed by Ku Klux Klan-controlled law-enforcement officers and convicted by a Klan-controlled state court of, for example, raping a white woman; and suppose that the unjustly convicted defendant did not (and could not) discover the proof of unconstitutionality until after his *502 release from state custody. If it were correct to say that § 1983 independently requires a person not in custody to establish the prior invalidation of his conviction, it would have been equally right to tell the former slave that he could not seek federal relief even against the law-enforcement officers who framed him unless he first managed to convince the state courts that his conviction was unlawful. That would be a result hard indeed to reconcile either with the purpose of § 1983 or with the origins of what was "popularly known as the Ku Klux Klan Act," *Collins v. Hardyman*, 341 U.S. 651, 657, 71 S.Ct. 937, 939, 95 L.Ed. 1253 (1951), the statute having been enacted in part out of concern that many state courts were "in league with those who were bent upon

abrogation of federally protected rights," *Mitchum v. Foster*, supra, 407 U.S., at 240, 92 S.Ct., at 2161; ef. Cong. Globe, 42d Cong., 1st Sess.., 577 (1871)(Sen. Trumbull explaining that, under the Civil Rights Act of 1871, "**the Federal Government has a right to set aside...action of State authorities" that deprives person of his Fourteenth Amendment rights**"). It would also be a result unjustified by the habeas statute or any other post-§ 1983 enactment. Nor do I see any policy reflected in a congressional enactment that would justify denying to an individual today federal damages...merely because he was unconstitutionally fined by a State, or **to a person who discovers after his release from prison that, for example, state officials withheld exculpatory material**. And absent such a statutory policy, surely the common...

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...law can give us no authority to narrow the "broad language" of § 1983, which speaks of deprivations of "any" constitutional rights, privileges, or immunities, by "[e]very" person acting under color of state law, and to which "we have given full effect [by] recognizing that § 1983 'provide[s] a remedy, to be broadly construed, against all forms of official violation of federally protected rights.'" *Dennis v. Higgins*, 498 U.S. 439, 443, 445, 111 S.Ct. 865, 869-870, 112 L.Ed.2d 969 (1991)(quoting *Monell v. New York City Dept. of Social Svcs.*, 436 U.S. 658, 700-701, 98 S.Ct. 2018, 2040-2041, 56 L.Ed. 611 (1978). *503 In sum, while the malicious-prosecution analogy provides a useful mechanism for implementing what statutory analysis requires, congressional policy as reflected in enacted statutes must ultimately be the guide. I would thus be clear that the proper resolution **2381 of this case (involving, of course, a state prisoner) is to construe § 1983 in light of the habeas statute and its explicit policy of exhaustion. **I would not cast doubt on the ability of an individual**

unaffected by the habeas statute to take advantage of the broad reach of § 1983.

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ROOKER-FELDMAN [see, e.g., D.E. #78 at ¶ (2)(B).IV, page 15 thereof, as follows:]

> Attached and appended as "Exhibit One" thereto Akers' "RESPONSE AND/OR OBJECTIONS TO [DEFENDANT] BISHOP'S 'MOTION FOR PERMISSION TO FILE AN AMENDED MOTION TO DISMISS' & ACCOMPANYING 'MEMORANDUM IN SUPPORT [THEREOF]'" filed and served on January 22, 2001 [Docket Entry #68], was a complete copy of ***Rooker, et al., v. Fidelity Trust Co., et al.***, 263 U.S. 413, 44 S.Ct. 149; and ***District of Columbia Court of Appeals, et al., v. Marc Feldman and Edward J. Hickey, Jr.***, 460 U.S. 462, 103 S.Ct. 1303. Again, with all due respect, Akers can see no proper application to the herein case. To whatever extent the herein defendants argue that any such application exists, Akers asserts that any/all similarities are overridden by hereinabove language of ***Heck v. Humphrey*** **in conjunction with** Title 18 U.S.C. § 1961, et seq., Title 42 U.S.C. §§ 1983 & 1985, together with the authorities in support thereof as cited in Akers' Complaint and Memorandum.[8]

Clearly, while the cases of ***Hermansen v. Chandler***, 2000 W.L. 554058; ***Heck v. Humphrey***, 512 U.S. 477, 114 S.Ct. 2364; ***Rooker, et al., v. Fidelity Trust Co., et al.***, 263 U.S. 413, 44 S.Ct., 149; and ***District of Columbia Court of Appeals, et al., v. Marc Feldman and...***

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[8] Akers would also hasten to add that **the herein Defendants conveniently ignore a key element of the Court's ruling in Rooker, et al., v. Fidelity Trust Co., et al.**, 263 U.S. 413, 44 S.Ct. 149, i.e., "Where constitutional questions actually arose in a cause **in which a state court had jurisdiction of the subject-matter and of the parties**..." [id., HN228]. **In the instant case, it is clear that the Kentucky Court's had neither**.

...***Edward J. Hickey, Jr.***, 460 U.S. 462, 103 S.Ct., 1303, have mutual applicability each with another, **only *Heck v. Humphrey* is properly-applicable to Akers' herein case – and only to that extent set forth hereinabove.**

(D)(ii) **Rosenbaum further argues that**: "In [*Hermansen*] the Court makes reference to several other opinions it has written in which it states that in order to recover damages under 42 U.S.C.§1983 (or civil actions under RICO), the plaintiff must first prove that his conviction has been reversed or otherwise been eliminated." **In response, Akers hereby re-states reiterates** his responses contained within hereinabove 2(C)(iii) through 2(D)(i).

D(iii) **Rosenbaum yet further argues that**: (a) "Because Plaintiff's complaint proves that his convictions still stand, a cause of action under Section 1983 of Title 42 or under the RICO statute becomes untenable and no cause of action has been stated against Carolyn P. Bishop"; & (b) **yet again, asserts** *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d (1994) as authority for dismissal of all claims against Defendant-Respondent Carolyn P. Bishop [***id.***, page 2, lines 5 - 16]. **Akers further responds that**: (a) These Defendants-Respondents and/or their respective legal counsel continue to fraudulently portray Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as a "collateral attack" of his convictions – **notwithstanding** that even they cannot deny that **both were obtained by means of "fraud" and "abuse of process"**, ***inter alia***, and were in clear and distinct violation of provisions of Article 1 - § 9 [Cl.10]; Article 1 - § 10 [Cl. 1]; Article IV - § 2 [Cl. 1]; the entire First Amendment; entire Fourth Amendment;

"Double Jeopardy Clause" of the Fifth Amendment; entire Sixth Amendment; entire Eighth Amendment; and entire Fourteenth Amendment of/to the United States Constitution [see also, e.g., ***North Carolina v. Pearce*** [Akers' Memorandum of 11/21/2000 at FN4]; ***Menna v. New York*** [***id.***]; ***Abney v.***...

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...***United States*** [***id.***]; ***Benton v. Maryland***; [***id.***, FN134]; ***Parratt v. Taylor*** [hereinabove ¶2(C)[iii](a)]; ***Daniel v. Williams*** [hereinabove ¶2(C)[iii](b)]; ***Lugar v. Edmondson Oil Co.*** [hereinabove ¶2(C)[iii](c)]; ***Moore v. City of Paducah*** [hereinabove ¶2(C)[iii](d)]; ***Hiser v. City of Bowling Green*** [hereinabove ¶2(C)[iii](e)]; and **Heck v. Humphrey** [hereabove ¶ 2(D)(i)]. Additionally, Akers hereby re-states and reiterates his assertions contained within, e.g., Akers' "Petition for Writ of Certiorari", as courtesy filed upon this Honorable Court on April 24, 2002, page 180 thereof, ¶ 2(B)(VIII)(i), i.e., as follows:

> "**Not only have Akers' convictions been 'reversed'**, but his **outrageous** 'First-degree Assault' conviction has been reversed **twice - by the Kentucky Court of Appeals**. Akers' 'First-degree Stalking' conviction was reversed **once**, but was affirmed after second conviction based upon, ***inter alia***, the fraudulent testimony of [the herein Defendants-Respondents] **coupled with, and augmented by**, the unconstitutional, fraudulent, and otherwise unlawful acts of Defendants Red Corn, Overstreet, and Ferguson.[9] The mere fact that Akers' was forced to enter an **unconstitutional 'guilty plea'** for 'Assault under Extreme Emotional Disturbance' on July 7, 2000,[10] in order to free himself from the 'tyranny and oppression' of the herein Defendants **does not relieve any of those defendants of any liabilities** under Title 18 U.S.C. § 1964(c), Title 42 U.S.C. § 1983, or Title 42 U.S.C. § 1985(3)."[11]

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[9] See ¶¶ 2, 3, 4, 5, 9, 10, 7 [sic (should be "11")], 12, 16, 32, 34, 37, 38, 39, 40, 43 through 47, 50 thru 52, 54, 56, 57, 58, 60 through 63, 64, 65 through 68, 70 through 95, esp. 96, 97 through 101, esp. 102, 103, 104, 107 through 112, 113, esp. 115, 117, 118, esp. 119 thru 127, 128 through 136, 138 through 142, 144 through 150, respectively, of Akers' Complaint **in conjunction with** parallel ¶¶ 2, 3(g), 4, B-1, C, D-1, E-1, E-2, E-12, E-16, E-32, E-34, E-37, E-38, E-40, E-43 thru E-47, E-50 thru E-52, E-54, E-56, E-57, E-58, E-60 thru E-63, E-64, E-65 thru E-68, E-70 through E-95, esp. E-96, E-97 through E-101, esp. E-102, E-103, E-104, E-107 through E-112, E-113, esp. E-115, E-117, E-118, esp. E-119, & E-120 through E-127, together with all footnotes thereto, respectively, of Akers' Memorandum.

[10] **See especially ("Stalking" charge): "*Ex post facto* law" defined** [Akers' Memorandum, page 6]; **Walton v. State**, 1977, 566 P.2d 765, 98 Idaho 422; **Ross v. Hegstrom**, 1969, 254 A.2d 556, 107 Conn. 403; **State v. Phillips**, 1960, 162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63; **People v. ex rel. Johnson v. Ruthazer**, 1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905; **Clayton v. Michael**, 1966, 141 N.W. 2d 538, 258 Iowa 1037; **Wigehert v. Lockhart**, 1946, ... (continued, page 26 hereof)

[11] **See especially ("Assault" charge): North Carolina v. Pearce, 89 S.Ct. 2089 (1969)** [Akers' Memorandum, FN4, pages 8 thru 10], i.e., "The theory of double jeopardy is that a person need only run the gantlet once. The gantlet is the risk of punishment which the state...imposes for that particular conduct. He risks maximum permissible punishment when first tried. That risk having been faced once need not be faced again. And **the fact that he takes an appeal does not waive his constitutional defense of former**..." (continued, page 26 hereof)

D(iv) Moreover, there yet remains sufficient time to launch a "collateral attack" of Akers' subject unlawful and unconstitutional "convictions" by means of a motion pursuant to R.Cr. 11.42...

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[10] **Wigehert v. Lockhart**, 1946, (continued from page 25 hereof): ...166 P.2d 988, 114 Colo. 485; Ex parte Foster, 1936, 61 P.2d 37, 60 Okla.Cr. 50; **Pierce v. Creecy**, Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113; **Ex parte Morgan**, D.C.Cal. 1948, 78 F.Supp. 756, affirmed 175 F.2d 404, cert. denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed. 503; **Ex parte Montoya**, 1943, 135 P.2d 281, 170 Or. 499 [id., FN2, page 6]; "**Due process of law defined**" [id.,FN5, page 8];

"Equal protection of the law" defined [id., FN6, page 11]; **"Fraud" defined** [id., FN7, page 13]; **Title 18 U.S.C. §§ 2261A, 2262, & 2265** [id., pages 15 & 16]; **CONSTITUTION OF TENNESSEE: ARTICLE 2, SECTION 8** with FN14 thereto [id., pages 18 & 19] and **ARTICLE 1, SECTION 14** with FN16 thereto [id., page 19]; **TENNESSEE CRIMINAL CODE: "39-17-308. Harassment"** [id., page 21] and **"39-17-309. Civil rights intimidation"** with FN21 thereto [id., page 22] & FN22 [id., page 23]; and **KENTUCKY REVISED STATUTES: "500.060 Territorial applicability"** with FN32 thereto [id., pages 31 & 32]; **"508.140 Stalking in the first degree"** with FN38 thereto [id., page 36].

[11] **North Carolina v. Pearce** (continued from page 25 hereof): "...**jeopardy** to a second prosecution. Green v. United States, 355 U.S. 184, 191-193, 78 U.S. S.Ct. 221, 225, 227, 2 L.Ed.2d 199." ..."In Ex parte Lange, 18 Wall. 163, 21 L.Ed. 872, the **petitioner...736...had already suffered complete punishment for his crime and could not be subjected to further sanction**." 733 "The ban on double jeopardy has its deep roots in the history of occidental jurisprudence. 'Fear and abhorence of government power to try people twice for the same conduct is one of the oldest ideas found in western civilization'. Bartkaus v. Illinois, 359 U.S.-S.Ct. 121, 151-155, 79 S.Ct. 676, 3 L.Ed.2d (Black, J., dissenting). **It prevents the State from using the criminal process as an instrument of harrassment** to wear the accused out by a multitude of cases with accumulated trials. Abbate v. United States, 359 U.S. S.Ct. 666, 672-673, 3 L.Ed.2d, 72." "'The vice 735 of this procedure lies in relitagating the same evidence before two different juries with a man's innocence or guilt at stake'. **'Harrasment of an accused by successive prosecutions...so as to afford the prosecution a more favorable opportunity to convict are examples when jeopardy attaches**. Downum v. United States, 372 U.S. 734, 736, 83 S.Ct. 1033, 1034, 10 L.Ed.2d 100. ...**'This case presents an instance of the prosecution being allowed to harass the accused with repeated trials and convictions on the same evidence, until it achieves its desired result**...' Ciucci v. Illinois, 356 U.S. 571, 573, 78 S.Ct. 839, 840, 2 L.Ed.2d 983. ...It is doubtless true that the State has an interest in adjusting sentences upward 737 when it discovers new evidence warranting that result. But **the individual has an interest in remaining free of double punishment**. And in weighing those interests against one another, **the Constitution has decided the matter in favor of the individual**. See United States v. Tateo, 377 U.S. 463, 475, 84 S.Ct. 1587, 1594, 12 L.Ed.2d, 448" (emphasis added). **See also: Menna v. New York**, 423 U.S. 61, 96 S.Ct. 241, 46 LEd(2d) 195 (1975), i.e., "Where the State is precluded by the United States Constitution from haling a defendant into court on a charge, **federal law requires that conviction to be set aside even if the conviction was entered pursuant to a counseled plea of guilty**" (emph. added); **Abney v. United States**, 431 U.S. 651, 97 S.Ct., 52 L.Ed(2d) 651 (1977), i.e., "Double jeopardy clause protects an individual against more than being subjected to double punishments; **it is a guarantee against being twice put to trial for the same offense**. U.S.C.A Const. Amend. 5" (emphasis added); Fourteenth Amendment to the United States Constitution [id., 10 & 11], i.e., "**No State shall make or enforce any law which shall abridge the privileges or**

immunities of citizens of the United States; ...nor deny any person within its jurisdiction **equal protection of the laws**". (emphasis added); and **Benton v. Maryland**, 89 S.Ct. 2056 (1969), i.e., "9. Double jeopardy prohibition of the Fifth Amendment represents **fundamental ideal in constitutional heritage** and it **applies to the states through the Fourteenth Amendment**; overruling Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149, U.S.C.A. Const. Amends. 5, 14. 11. Idea underlying constitution **prohibition against double jeopardy** is that state **with all its resources and powers** should not be allowed to make **repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrasment, expense and ordeal and compelling him to live in a continued state of anxiety and insecurity, as well as enhancing possibility that even though innocent he may be found guilty**. U.S.C.A. Const. Amend.5." (emphasis added)

...and/or Petition for Writ of Prohibition **in a timely manner** if such remain necessary following the lawful conclusion of Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)".

D(iii) **Rosenbaum** (b) **yet again, asserts** *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d (1994) as authority for dismissal of all claims against Defendant-Respondent Carolyn P. Bishop. **In response, Akers yet again re-states reiterates** his responses contained within hereinabove 2(D)(i), page 20 hereof.

(E)(i) **Rosenbaum argues that**: "Specifically with regard to 42 U.S.C. § 1985, [a] there has been no allegation in the complaint that the Plaintiff is a member of a protected class, [b] that any discriminatory acts or violations of any of his rights occurred as a result of his failure to be protected as a member of a particular class, or [c] that there is any other discriminatory class action." **Akers responds** by hereby directing Rosenbaum's attention to the very language of Title 42 U.S.C. § 1985, i.e., as follows:

> "**Conspiracy to interfere with civil rights**: (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury...,

> or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive** <u>any citizen</u>**...equal protection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, <u>or</u> class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators."(emphasis added)

Thus, this language, when viewed in tandem with FN10, FN11, & FN12 [Page 17of Akers' Memorandum & Memorandum of Law of 11/21/2000]; ¶¶ 1 through 14, 16, 24, 34, 38, 40...

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...through 43, 47, 50, 58, 64 through 66, 72, 73, 75, 76, 78, 79, 81, 82, 84 through 94, 96 through 97, 99, 101 through 104, 106 through 108, 110 through 113, 115, 116 through 127 of Akers' Complaint of 11/21/2000 (Akers' Copmplaint); <u>and</u> parallel ¶¶ 9, 12, 14, 16, 24, 34, 38, 40 through 43, 47, 50, 58, 64 through 66, 72, 73, 75, 76, 78, 79, 81, 82, 84 through 94, 96 through 97, 99, 101 through 104, 106 through 108, 110 through 113, 115, 116 through 127 of Akers' Memorandum & Memorandum of Law of 11/21/2000 (Akers' Memorandum), together with all corresponding footnotes thereto, respectively, **make it <u>abundantly</u> clear** that [a] there are allegations in the complaint that the Plaintiff is a member of a protected class, (i.e., **a <u>citizen</u> of the United States of America**); [b] that there have been

"discriminatory acts or violations of [Akers'] rights as a result of his failure to be protected as **a citizen of the United States of America**. With respect to "[c] that there is any other discriminatory class action", **this Court and all of the Defendants-Respondent and/or their respective counsels are certainly aware that Akers can not**, under the law, bring any manner of "class action" – **no matter how justified** – inasmuch as Akers is not an attorney.

(E)(ii) **Rosenbaum cites**: "...the case of *Hoai v. Vo*, 935 F.2d 308, 290 U.S.App.D.C. 142 (1991), certiorari denied 112 S.Ct. 1578, 118 L.Ed.2d 220, rehearing denied 112 S.Ct. 2007, 118 L.Ed.2d 602, [as authority that Akers'] claim is fatally flawed as to Defendant Bishop under 42 U.S.C. §1983 and §1985(c)" and further argues [iii] "That case makes it clear that Plaintiff's inadequate allegations cannot be cured when the complaint [a] does not state which specific actions were under color of state law as to a particular individual, and [b] there is a total failure to allege insidious discrimination, class based animus or any other violation relating to the alleged conspiracy to deprive Akers of equal protection of laws". **Akers responds that**: A thorough review of "that...

...case" reveals that ***Hoai v. Vo*** **in fact supports the validity of Akers' herein claims** by means of its specific language as follows:

> "Private parties may be deemed to have acted "under color of law" within meaning of § 1983 **when they conspire with state officials and when they willfully engage in joint activity with state or its agents**. 42 U.S.C.A § 1983" [***id.***, at HN4].
>
> "Inadequacies in drafting civil rights complaint including **failure to allege action taken under color of law and failure to allege invidiously discriminatory class-based animus**, were not type of defects in pleading that could have been cured by decision of Court of Appeals to allow amended complaint. 42 U.S.C.A. §§

1983, 1985(3) *309 **143 Appeal from the United States District Court for the District of Columbia" [*id.*, at HN6];

"To be actionable under § 1985(3), **alleged conspiracy must be motivated by some class based invidiously discriminatory animus**, 42 U.S.C.A. § 1985(3)" [*id.*, at HN9].

The term "invidious discrimination" is defined as follows:

"Term 'invidious" in context of claim that difference in treatment amounts to treatment amounts to "invidious" discrimination in violation of the Fourteenth Amendment, means arbitrary, irrational and not reasonably related to a legitimate purpose. Eaton v. State, 363 A.2d 440, 441" {Black's Law Dictionary, Sixth Edition, 12th Reprint, 1998]

Thus, the facts of Akers' herein case and as recapitulated within hereinabove ¶ 2.E(i), **can leave no reasonable doubt** that: (a) Akers does, in fact, state specific unlawful "overt acts" by Bishop and her co-conspirators which were, clearly, under "color of state law"; **and** [b] **there is absolutely no "failure to allege insidious discrimination**, ...or...other violation relating to the alleged conspiracy to deprive" Akers of equal protection of laws.

(F)(i) **Rosenbaum further asserts that**: "It is presumed that subsection (3) of §1985 is the only one which would apply in connection with the allegations which have been made in Plaintiff's complaint against Carolyn P. Bishop." **Akers responds that**: Rosenbaum should only "**presume**" that Akers' herein claims are well-founded in Title 18 U.S.C. § 1964(c), Title 42 U.S.C. § 1983, Title 42 U.S.C. § 1985(3) and all those other Constitution, Statutory, & Common...

...Law provisions as cited within Akers' Complaint and

Memorandum as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000.

(F)(ii) **Rosenbaum continues to argue that**: In order to sustain a claim under Title 42 U.S.C.A. § 1985(3), Akers must plead "class-based, invidiously discriminatory animus", **to which Akers hereby restates and reiterates** his response in hereinabove ¶ 2.E(ii). With respect to the additional "authority" cited by Rosenbaum, i.e., *United Brotherhood of Carpenters v. Scott*, 463 U.S. 825, 77 L.Ed.2d 1049, on remand 715 F.2d 161, rehearing denied 464 U.S. 875 (1983), after thorough review, Akers can find no proper application to Akers' herein case - except for the explicit statement of Justice BLACK in his closing remarks, ***viz***, "...**the Court will, of course, enforce any statute within the power of Congress to enact**." That is all Akers is asking the Federal Courts to do in his instant case - **to enforce the explicit provisions of Title 18 U.S.C. § 1964 et seq., Title 42 U.S.C. § 1983, Title 42 U.S.C. § 1985(3)**.

(G)(ii) **Rosenbaum attempts to minimize that**: "[T]he gravamen of the complaint herein...seem to be" that of "malicious prosecutions" and, thereby, invoke Kentucky Law and its pendant statute of limitations. **Akers responds that**: He has **absolutely no intentions** of asserting a claim under Kentucky Law inasmuch as it is clear that the Kentucky Courts lacked both "subject matter" and "personal" jurisdiction over Akers and his prosecutions **and** adequate Federal remedies are provided for pursuant to Title 18 U.S.C. § 1964(c), Title 42 U.S.C. § 1983, Title 42 U.S.C. § 1985(3) **together with** all those other Constitution, Statutory, & Common Law provisions as cited within Akers' Complaint and Memorandum as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000.

(H) **Rosenbaum asserts that**: [i] "The most persuasive case with regard to the failure to state a cause of action is the case of *Kelm v. Hyatt*, 44 F.3d 415 (6thCir. 1995) in which Plaintiff...

...attempted to sue his wife based on federal civil rights statute because the wife had obtained and enforced a CPO, which is a protective order nearly identical to the domestic violence order in place in Kentucky in the case at bar"; [ii] "It was held that the Plaintiff's wife was not a state actor and no viable claim could be established against her under the federal civil rights statutes with regard to violation of due process even if there was service of the CPO and enforcement"; [iii} There mere use by the wife of the criminal statutes of the state in which she resided does not constitute "state action" or render her a state actor or in any way cause her participation in any state agency".

Akers responds that: While all that may have been true in the *Kelm* case, none of those factors apply to the instant case inasmuch the specific unlawful acts committed by Bishop, and enumerated in hereinabove ¶ 2(C)(i), **do not even remotely compare** to those of Amy Kelm. Moreover, the crux of the Court's decision in Kelm revolved around the fact that there remained a "pending state action" and, therefore, the ***Younger*** Abstention Doctrine must be applied. **At no time during Akers herein case** has any state court action remained **either pending or even contemplated**.

(I) **Rosenbaum continues to assert that**: "In other words, action by a private individual such as Carolyn P. Bishop under a state statute is simply insufficient to convert that party into a state actor or to bring into play any civil rights claim" and further relies upon *Offutt v. Kaplan*, 884 F.Supp. 1170 (N.D.Ill. 1995) and *Clapp v. LeBouef, Lamb, Leiby and MacRae*, 862 F.Supp. 1050 (S.D.N.Y. 1994), affirmed, 54 F.3rd 765, certiorari denied, 116 S.Ct. 380, 133 L.Ed.2d 303 as alleged "authorities". **Akers responds that**: A thorough review of these cases reveals that *Offutt*, as well, addressed a case in which there remained a "pending state action" and, therefore, the ***Younger*** Abstention Doctrine required application by the Court. *Offutt* just simply does not apply to Akers' herein case. With respect to *Clapp v. LeBouef, Lamb, Leiby and MacRae*, 862 F.Supp. 1050 (S.D.N.Y. 1994), affirmed, 54 F.3rd 765, certiorari denied, 116 S.Ct. 380, 133 L.Ed.2d 303, ...

...however, that case clearly **does apply** to Akers' herein case – **at least with respect to its language as follows**:

> "**In considering motion to dismiss for failure to state claim, allegations in complaint must be construed favorably to plaintiff**. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A." [*id.*, at HN7, emphasis added]; &
>
> "Mere action by private party under state statute, **without more**, is insufficient to convert party into state actor and satisfy state action requirement for civil right liability. 42 U.S.C.A. § 1983." [*id.*, at HN14, emphasis added]

Clearly, in view of those specific factual allegations – all of which yet remain unchallenged by Defendant-Respondent Bishop – **Akers Complaint provides infinitely "more"**.

(J) **Rosenbaum asserts that**: (i) "Plaintiffs other federal cause of action relates to violation of the RICO Act, discussed briefly above"; (ii) "It is difficult to determine what the actual RICO allegations are, but as best Defendant, Carolyn P. Bishop can make out, the claim is that [a] Dr. Vaughn, a medical surgeon in Lexington, Kentucky, committed mail fraud by sending a bill for the surgery he performed on her as well as his other services to her insurance company for payment. [b] Carolyn P. Bishop is alleged to be equally responsible for this by virtue of being a co-conspirator in violation of 18 U.S.C.§1962 at which (sic) the offense is described"; (iii) "A plain reading of the statute reveals how stretched this interpretation is (sic) particularly when taking into account the definitions contained at §1961 of title 18 subsection 1 (sic) [a] defining racketeering activity as '...any act which is indictable under any of the following provisions of title 18, U.S.C. ...§1341 (relating to mail fraud)...' and then [b] requiring conspiracy of the individual"; & [iv] "That section also requires 'a pattern of racketeering activity' requiring at least two acts of racketeering activity". **In that same order, Akers responds as follows:**

(J)(i) **One of Akers' "other federal cause of action** relates to violation of the RICO Act" **and is discussed, extensively,**

within ¶ 2(C)(i) hereinabove.

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(J)(ii) **There should be nothing "difficult to determine"** about what the actual RICO allegations are. The statutory and factual bases therefore are **clearly set forth** within Akers' Complaint and Memorandum as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000. If Bishop and/or counsel Rosenbaum are substantially illiterate, then perhaps they should seek tutoring or remedial reading classes for help. **Further**, (a) Akers agrees that "Dr. Vaughn, a medical surgeon in Lexington, Kentucky, committed mail fraud by sending [numerous] bills for the surgery he performed on [Bishop] as well as his other services to her insurance company for payment; and that (b) Carolyn P. Bishop is...equally responsible for this..." inasmuch as **both Vaughan and Bishop were certainly aware that Bishop's symptoms were the proximate result of a "pre-existing condition" which Akers had nothing to do with**.

(J)(iii) **Even a cursory reading** of Title 18 U.S.C. § 1961 through § 1965 (R.I.C.O.) as cited on, ***inter alia***, pages 14 & 15 of Akers' Memorandum as filed in United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000, is neither "stretched" **nor misapplied** with respect to Defendants Bishop, Vaughan, **nor any other Defendants with Akers' Complaint**.

(K)(i) **Rosenbaum asserts that**: "The law is clear that the gist of the crime of mail fraud is the use of mail in executing the scheme. *United States v. Weatherspoon*, 581 F.2d 595 (7th Cir. 1978). **Akers offers no dispute.**

(K)(ii) **Rosenbaum further asserts that**: "...18 U.S.C. § 1964 provides that an individual who is injured in his business or property by virtue of the 'scheme' or conspiracy may file a civil action." **Again, Akers offers no dispute.**

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(K)(iii) **Rosenbaum yet further asserts that**: "No injury to either is alleged" and, with that, **Akers strongly disagrees** and hereby directs Rosenbaum's attention to "COUNT SIXTEEN - R.I.C.O. VIOLATIONS", Page 10 hereof.

(K)(iv) **Rosenbaum still further asserts that**: "The only property mentioned is a bag of funds allegedly taken prior to the divorce, [a] an item of property that was dealt with by the releases and waivers in the settlement [b] made part of the divorce decree, and [c] referred to by Plaintiff in his complaint and 'Exhibits'." **In that same order, Akers responds as follows:**

(K)(iv) Akers hereby directs Bishop's and Rosenbaum's attention to "COUNT FIFTEEN - R.I.C.O. VIOLATIONS", Pages 8 - 10 hereof. Moreover, **surely Rosenbaum and/or Bishop do not contend that** "an item of property that [Akers could not, at the time, even prove had been seized by Bishop] was dealt with by the releases and waivers in [an admittedly forged "property settlement agreement"]; ...fraudulently [b] made part of the divorce decree; and, then, [c] referred to by Plaintiff in his complaint and 'Exhibits'" as constituting "forgery in the second degree" (in violation of K.R.S. 516.030), and "theft by extortion" (in violation of K.R.S. 514.040), **both being violations of TITLE 18 U.S.C. §§ 1961 & 1962.**" [see "COUNT SEVENTEEN - R.I.C.O, VIOLATIONS, pages 10 - 11 hereof].

(K)(v) **Rosenbaum then argues that**: "Concerning to (sic) §1964, there are cases in which insurance companies have sued under RICO to recover from Plaintiffs in personal injury laws suits and their co-conspirator physicians and lawyers who have created fictitious or overstated bills for the purpose of fraudulently enhancing personal injury claims. Under this theory, if in fact Dr. Vaughn (sic) and Carolyn P. Bishop engaged in a conspiracy to fraudulently use the mail to send bills for services that were not performed, then the insurance company paying those bills would have a cause of action under RICO." **Akers agrees** and would be more than willing to provide...

...all necessary documentation and testimony to that insurance company in order to prosecute such a claim insofar as such is not yet barred by applicable statute of limitations, ***inter alia***.

(K)(vii) **Rosenbaum yet further argues that**: "Obviously, the nexus of this scheme, [a] to obtain money for Dr. Vaughn (sic), [b] from which is not alleged Carolyn P. Bishop profited, [c] has no relation to the current claim by the Plaintiff, Akers, and [d] his allegations fail to meet even a relaxed interpretation of 18 U.S.C.§1962 which would allow certain individuals who (sic) have standing to bring a civil action under §1964". **Once again, in that same order, Akers responds as follows:**

> (a) Akers does not dispute that "...the nexus of this scheme, [was, apparently] to obtain money for Dr. Vaughn (sic)", and that Akers has no evidence that Bishop shared in the resulting profits of Vaughan. However, **neither of those factors form the bases of Akers' claims against Bishop**. Instead, Akers' claims with respect thereto revolve around the fact that Bishop fraudulently concealed the fact that **all those symptoms from which she suffered were in no way attributable to any act by Akers** but were, nonetheless, fraudulently misused by her and her co-conspirators herein to fraudulently extradite, fraudulently prosecute, and then fraudulently imprison Akers – **all by means of abuse of process – and for the specific illicit purposes of revenge, attention, and sympathy, *inter alia***. Those facts **do form a nexus** for the purposes of Akers' herein claims against Bishop; satisfy **even the most stringent** interpretation of Title 18 U.S.C. §1961, ***et seq.***; and **without question permit Akers to "have standing"** to both bring and sustain the within R.I.C.O. action in the Federal Courts pursuant to that statute inasmuch as Akers was injured in his property and businesses as a proximate result of Bishop's acts.

(L) **Rosenbaum asserts that**: "Many other references in the memoranda of other parties discuss the failure to properly fall under RICO, and [Bishop] will not rehash those, inasmuch as she has incorporated their memoranda, including any immunity issues appropriate for her as a witness". **Akers simply responds that**: The simple truth is that Bishop and/or her legal counsel do not wish to "rehash" the arguments heretofore presented by the remaining Defendants-Respondents and/or their respective legal counsel inasmuch as **they cannot defend the arguments presented therein**. Akers remains confident, however, that sooner or later either the Sixth Circuit Court of Appeals and/or the United States Supreme Court will make that point abundantly clear.

(M) **Finally, Rosenbaum argues**: (i) "As Judge Wilhoit further noted in his memoranda opinion and order referred to above, once the federal claims are dismissed, assuming one interprets the balance of the allegations as a malicious prosecution action, this would be state cause of action. There would be no federal question left, it being merely a pendent state claim which should be dismissed as well. [ii] By way of information for this court, Kentucky law requires that in an action for malicious prosecution one of the essential elements of the claim is that the charges resulted in no conviction. *Raine v. Drasin*, 621 S.W.2d 895 (Ky. 1981). [iii] On the face of the complaint the fact Plaintiff's criminal charges are admitted to have resulted in convictions, would preclude an action under Kentucky law for malicious prosecution. [iv] Therefore, Carolyn Bishop also requests that any state claims be dismissed". **Once again, in that same order, Akers responds as follows:**

> (i) **Akers herein claims do not include, nor do they contemplate**, a state claim for "malicious prosecution". They are based upon the specific provisions of Title 18 U.S.C. § 1964(c); Title 42 U.S.C. § 1983; & Title 42 U.S.C. § 1985(3). Regardless of how Rosenbaum wishes to characterize the facts of this case, Akers' Federal claims are...

valid and are wholly-supported by those Constitutional, Statutory, and Common Laws cited within Akers' Complaint and Memorandum as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000. **Akers shall not be deterred** by these hooligan Defendants-Respondents and/or their respective legal counsel in obtaining the redress provided for by, ***inter alia***, those same Federal Laws in conjunction with the First Amendment to the United States Constitution.

(ii) **Once again, Akers' herein case does not rely upon "Kentucky law" nor the outrageous manner in which Kentucky law is implemented in violation of its very own Constitution of Kentucky as well as the United States Constitution.** Therefore, *Raine v. Drasin*, 621 S.W.2d 895 (Ky. 1981), a Kentucky case, **bears no proper applicability to Akers' herein case and shall not be recognized as bearing such.**

(iii) Akers' fraudulent criminal charges did, **in fact**, result in fraudulent convictions in violation of those Constitutional, Statutory, and Common Laws cited within Akers' Complaint and Memorandum as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000. Again, **it is immaterial that an action under Kentucky law for "malicious prosecution" is precluded.**

[iv] Obviously, Akers does not oppose the dismissal of any "state claims" under Kentucky law inasmuch as none are either pending or contemplated.

(N) **Rosenbaum then prays**: "Wherefore, the defendant, Carloyn P. Bishop, respectfully requests Plaintiff's claims against her be dismissed". **Akers responds that: not even a single claim** against Bishop, nor **any** of her co-Defendants **can lawfully be dismissed**, neither in part nor in their entirety.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Petitioner
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024
TELEPHONE: 615/834-2843
FACSIMILE: 615/831-9307

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP, et al, Defendants-Appellees."; (2) I am a citizen of the United States of America and the State of Tennessee therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff- Petitioner James G. Akers; and (5) I have, on this, the 30th day of September, 2002, served a true and complete copy of the foregoing "RESPONSES & OBJECTIONS TO: 'RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS'" via "**UNITED STATES MAIL-FIRST CLASS**", postage pre-paid, upon each and every Defendant-Respondent named therein and/or their respective counsel-of-record as follows: **[Listing of served Parties and/or their respective Counsel-of-Record omitted. See official record for listings.]**

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o POST OFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

STATE OF TENNESSEE)
) s/s
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 30th day of September, 2002, has acknowledged the foregoing, and has subscribed her signature thereto in my presence.

s/ Lindsey M. Jesperson
NOTARY PUBLIC, Tennessee-at-large
My Commission Expires: 09/25/2004

[END OF DOCUMENT]

Eastern District of Kentucky
FILED
MAY 13 2002
AT LEXINGTON
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

JAMES G. AKERS,	) CIVIL ACTION NO: 5:02cv0162
	)
Plaintiff-Petitioner,	) JUDGE JENNIFER COFFMAN
	)
	) **MOTION TO STRIKE;**
	) **and MOTION TO STAY**
v.	) **PROCEEDINGS PENDING**
	) **DETERMINATION OF**
	) **"VENUE" BY UNITED**
	) **STATES SUPREME COURT**
	)
	)
CAROLYN P. BISHOP; *et al*,	)
	)
Defendants-Respondents.	)

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE-NASHVILLE DIVISION [U. S. SUPREME COURT CASE NO. 01-1619]

COMES THE PLAINTIFF-PETITIONER, James G. Akers (hereinafter "Akers'), **without counsel** in strict accordance with Title 28 U.S.C. § 1654, **without acknowledging** that United States District Court for the Eastern District of Kentucky, at

Lexington, is one of proper venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" (hereinafter "Akers' Complaint) as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000 [Civil Action No. 3:00cv1142 therein], and hereby moves this Honorable Court to "**STRIKE**" the "MOTION FOR JUDGEMENT ON THE PLEADINGS" filed by Kentucky Assistant Attorney General D. Brent Irvin, on April 29, 2002, purportedly on behalf of Defendants Thomas L. Clark, Rebecca M. Overstreet, Pamela R. Goodwine, Lou A. Red Corn, Cindy G. Schwartz, & Todd D. Ferguson in strict accordance Rule 12(f) of the Federal Rules of Civil...

...Procedure on grounds that the said "MOTION" is: (A) **clearly insufficient on its face** pursuant to F.R.C.P. 8(d), 8(e)(2), & 8(f); (B) **clearly fraudulent** pursuant to F.R.C.P. 9(b)(1), (2), (3), & (4); and (C) **clearly redundant, impertinent, [and] scandalous** pursuant to F.R.C.P. 11 & 12(f).[1] In further support, Akers' attaches and appends hereto his herewith and contemporaneous "**MEMORANDUM & MEMORANDUM OF LAW**".

The factual allegations contained within Akers' Complaint, when coupled with applicable Constitutional, Statutory, & Common Laws of the United States of America as cited within Akers' "MEMORANDUM & MEMORANDUM OF LAW" (hereinafter "Akers' Memorandum") filed and served contemporaneously therewith Akers' Complaint on November 21, 2000, will speak for themselves. Summarily, the allegations against these Defendants-Respondents include, ***inter alia***, charges that, beginning in about mid-July, 1993, and continuing through July 7, 2000:

> (a) The named Defendants-Respondents engaged in various "conspiracies" and/or "chain conspiracies" in violation of TITLE 42 U.S.C. § 1985 [see Akers' "PETITION FOR WRIT OF CERTIORARI" filed and served on April 24, 2002, ***viz***, "COUNT ONE" through "COUNT FOUR", pages 4 through 6 thereof; "COUNT

TWELVE", pages 9 & 10 thereof; & "COUNT TWENTY-THREE, page 21 thereof] **and, in the furtherance and concealment thereof;**

(b) The named Defendants-Respondents committed numerous specific "overt acts" in violation of TITLE 42 U.S.C. § 1983 [***id.***, ***viz***, "COUNT[S] FIVE through ELEVEN", ...

---

[1] **Once again**, Akers must call into question the propriety of Irvin's representation of Defendants named only as individual "persons" as the proximate result of criminal, unconstitutional, and/or otherwise unlawful acts committed in their respective "private capacities" - utilizing the "entire resources of state government" as funded by revenues collected from the innocent taxpayer of Kentucky. **Neither the Commonwealth of Kentucky nor the innocent taxpayers thereof** have been named as parties to Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)".

...pages 5 - 9 thereof; "COUNT[S] THIRTEEN & FOURTEEN", pages 10 - 11 thereof; & "COUNT[S] TWENTY-TWO & TWENTY-THREE", page 21 thereof] **and, in the course thereof;**

(c) The named Defendants-Respondents committed numerous predicate acts in violation of TITLE 18 U.S.C. § 1961, ***et seq.***, as are all detailed within Akers' Complaint and Memorandum in support [***id.***, ***viz***, "COUNT FIFTEEN through TWENTY-ONE", pages 8 through 11 thereof, for enumerations].

Except for Defendant Vaughan's denial that "he was a party to any alleged conspiracy [or] engaged in any unlawful conduct" [see USDC-MTD Case No. 3:00cv1142, D.E. #51 at ¶ II(B)(1), page 2, lines 6 & 7];[2] Defendant Kelly's denial that he has had any contact with Akers since September 23, 1994 [***id.***, D.E. #76, page 2, lines 8 & 9];[2] & Defendant-Respondent Bishop's denial of "the substantive allegations against her with the exception of any items which appear of public record"

[USDC-EDKY Case No. 5:02cv0162, D.E. #2 at ¶ 3],[2] **not <u>even a single</u> Defendant-Respondent** has attempted to controvert **<u>even a single</u> averment** as contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" inasmuch as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes and the Defendants-Respondents **<u>cannot deny the factual allegations against them</u> without subjecting themselves to <u>still further sanctions and/or penalties</u> under Federal Law**. Additionally, Akers would point out that **<u>each and every one</u> of those herein Defendants-Respondents <u>and</u> their respective counsel-of-record** are...

---

[2] Even so, the remaining factual allegations would likely be sufficient to obtain a "Summary Judgement" against these Defendants-Respondents – **<u>notwithstanding</u> the fraudulent misrepresentations contained within their said pleadings**. [see USDC-TNMD Case No. 3:00cv1142, D.E. #68, D.E. #69, & D.E. #78, respectively]

...**<u>certainly aware</u>** that Akers has vehemently contested the issue as to whether venue properly lies with this Honorable Court or United States District Court for the Middle District of Tennessee-Nashville Division [***id.***].

This latest pleading by Kentucky's Assistant Attorney General D. Brent Irvin is no less "frivolous" than all his preceding ones in that he and the Defendants-Respondents he purports to represent are now attempting to usurp the appellate function of the **United States Supreme Court** in like manner to that in which they have heretofore **<u>consistently</u> usurped the Constitution and Laws of the United States of America <u>as well as</u> the Constitutions and Laws of <u>both</u> the State of Tennessee <u>and their very own Commonwealth of Kentucky</u>**.

<u>WHEREFORE</u>, for the foregoing reasons <u>in conjunction with</u> those set forth in Akers' herewith "MEMORANDUM & MEMORANDUM OF LAW" and Akers' "PETITION FOR WRIT OF CERTIORARI" as [courtesy] served upon this Honorable Court on April 24, 2002, the Plaintiff-Petitioner, James G. Akers,

without counsel, must respectfully ask and pray of this Honorable Court to "**STRIKE**" the hereinabove "MOTION FOR JUDGEMENT ON THE PLEADINGS" and to "**ORDER**" the within case to be held in abeyance pending determination of the issue of proper venue by the United States Supreme Court.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Petitioner
POST OFFICE BOX 3648
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Eastern District of Kentucky
FILED
MAY 13 2002

AT LEXINGTON
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

JAMES G. AKERS,	) CIVIL ACTION NO: 5:02cv0162
	)
Plaintiff-Petitioner,	) JUDGE JENNIFER COFFMAN
	)
	) **MEMORANDUM &**
	) **MEMORANDUM OF LAW**
	) **[in support of accompanying]**
v.	) **MOTION TO STRIKE;**
	) **and MOTION TO STAY**
	) **PROCEEDINGS PENDING**
	) **DETERMINATION OF**
	) **"VENUE" BY UNITED**
	) **STATES SUPREME COURT**
	)
CAROLYN P. BISHOP; *et al*,	)
	)
Defendants-Respondents.	)

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE-NASHVILLE DIVISION [U. S. SUPREME COURT CASE NO. 01-1619]

COMES THE PLAINTIFF-PETITIONER, James G. Akers (hereinafter "Akers'), **without counsel** in strict accordance

with Title 28 U.S.C. § 1654, **without acknowledging** that United States District Court for the Eastern District of Kentucky, at Lexington, is one of proper venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" (hereinafter "Akers' Complaint) as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000 [Civil Action No. 3:00cv1142], and files this "MEMORANDUM & MEMORANDUM OF LAW [in support of the accompanying] MOTION TO STRIKE; and MOTION TO STAY PROCEEDINGS PENDING DETERMINATION OF 'VENUE' BY [the] UNITED STATES SUPREME COURT" in response and/or objection to the "MOTION FOR JUDGEMENT ON...

-1-

...THE PLEADINGS" filed by Kentucky Assistant Attorney General D. Brent Irvin (hereinafter "Irvin") on April 29, 2002, purportedly on behalf of the herein Defendants-Respondents Thomas L. Clark, Rebecca M. Overstreet, Pamela R. Goodwine, Lou A. Red Corn, Cindy G. Schwartz, & Todd D. Ferguson (hereinafter "Clark", "Overstreet", "Goodwine", "Red Corn", "Schwartz", & "Ferguson", respectively) .

1. In his said "MOTION", Irvin asserts and/or argues as follows:

> (A) "[Clark, Overstreet, Goodwine, Red Corn, Schwartz, & Ferguson] jointly move this Court to grant them judgement on the pleadings and dismiss them from this action based on [i] lack of jurisdiction and [ii] failure to state any cognizable claims against them." [*id.*, page 1, lines 15 - 17 (clarification added];
>
> (B) "This is an action in which a *pro se* plaintiff, James G. Akers, [i] **generally** alleges violations of his civil rights pursuant to 42 U.S.C. §§ 1983, and 1985(3) and [ii] asserts violations of the Racketeer Influenced and Corrupt Organizations Act ('RICO'), 18 U.S.C. § 1983(c)." [*id.*, page 1, ¶ 1, lines 1 - 4 (emphasis added)]

(C) [i] "This is **at least** Akers' second federal civil suit. [ii] The first civil suit was filed in the Eastern District of Kentucky **while Akers was still a prisoner**. See, Civil Action No. 99-173, styled *James G. Akers v. Commonwealth of Kentucky*. That case was screened **pursuant to the Prison Litigation Reform Act** and dismissed as frivolous by Chief Judge Henry R. Wilhoit, Jr." [***id.***, page 1, ¶ 1, FN1 (emphasis added)];

(D) "Most of the so called 'conspirators' gave the **crime victim** support." [***id.***, ¶ 1, page 2, line 3 (emphasis added)];

(E)[i] "After [Akers] **two criminal convictions were reversed in part and affirmed in part (the stalking conviction was affirmed after the second appeal), Akers ultimately pleaded guilty** on July 7, 2000, to assault under extreme emotional disturbance, a class D Felony. Complaint ¶ 121. [ii] These convictions have never been vacated, reversed, or set aside." [***id.***, ¶ 2, lines 2 - 5 (emphasis & clarification added)];

(F) "Movants herein filed such a motion on December 18, 2000 [D.E. 38] supported by a memorandum of law [D.E. 39] wherein they asserted various defenses including [i] res judicata, [ii] collateral estoppel, [iii] the *Heck v. Humphry* doctrine, [iv] the *Rooker-Feldman* doctrine, or [v] based on their absolute Eleventh Amendment immunities, [vi] judicial immunities, [vii] prosecutorial immunities, or [viii] federal qualified immunities from suit, and [ix] the one year statute of limitations. [x] Any of these defenses are sufficient to defeat all of Akers claims against movants. [xi] The *Heck* doctrine, res judicata, absolute witness immunity and statute of limitations defenses should bar his claims against the remaining defendants who may not be state actors." [***id.***, ¶ 4, page 2, lines 2 - 5; & page 3, lines 1 - 2 (emphasis added)];

(G) "It is anticipated that most of the defendants will waive their rights to file briefs in opposition to [Akers'] petition for writ of certiorari, given that the law is settled and further briefing is not necessary." [***id.***,

page 4, ¶ 11 (clarification added)];

(H) "This case is ripe for consideration of the [i] jurisdictional and [ii] immunity defenses previously asserted in the United States District Court for the Middle District of Tennessee." [*id.*, page 4, "Argument", lines 1 & 2];

(I) "A prompt ruling on these threshold jurisdictional and immunity issues will [i] promote judicial economy and [ii] avoid requiring Akers and his witnesses to travel to Kentucky where he fears such travel expenses will cause 'all of his resources [being] depleted'. [iii] This should also alleviate Akers fear that if he returns to Kentucky he will be subjected to additional criminal charges if he violates the 'yet outstanding and unconstitutional Domestic Violence Order." [*id.*, lines 8 - 12];

(J)[i] "Given the frivolous nature of Akers' Complaint, a quick disposition of this case is in the public interest. [ii] Crime victims and witnesses in criminal proceedings should not be subjected to further harassment by the likes of Akers, who attempts to collaterally attack his conviction while simultaneously pursuing a frivolous civil rights/ RICO Complaint that obviously violates Federal Civil Rule 11. [iii] Akers is not an attorney, but he should have known that his case was frivolous based on Judge Wilhoit's dismissal of his prior federal case." [*id.*, page 5, lines 1 - 6];

(K) "In short, consideration of all the previously filed motions to dismiss for lack of jurisdiction or failure to state valid claims will [i] promote judicial economy, [ii] promote the underlying policies behind judicial, quasi-judicial, and qualified immunities, and [iii] should soothe Akers' fears as to the parade of horribles he may be subjected to if he physically returns to Kentucky. [iv] A prompt review of the tendered motions and

memoranda and (sic) will expedite the resolution of this action for all concerned – [v] **especially the innocent victim** of the domestic violence he inflicted, **and all those who gave moral support** to resist Akers' abuse." [***id.***, lines 7 - 13 (emphasis added)];

(L) "In further support of this motion, movants herein adopt and incorporate by reference as if fully set forth herein their memoranda of law filed in support of their motion to dismiss when the case was filed in the United States District Court for the Middle District of Tennessee." [***id.***, page 4, "Argument", lines 14 - 16]; &

(M)[i] "WHEREFORE, defendants ...Overstreet, ...Clark, ...Goodwine, ...Red Corn, ...Schwartz, and...Ferguson respectfully request that this Court enter an order dismissing them from this action based on the principles announced by the Supreme Court in *Heck v. Humphry*; or that these defendants should be dismissed on the *Rooker-Feldman* doctrine or *res judicata*; or that they be dismissed on their respective absolute immunities and prosecutorial immunities from suit, or [vi] their qualified immunities from suit; or as barred by the one year statute of limitations. [ii] In order to avoid piecemeal appeals, defendants urge this Court to *sua sponte* dismiss Akers' Complaint against all the remaining defendants based on all the defenses they asserted before when this case was before the U.S. District Court for the Middle District of Tennessee including *res judicata* and the *Heck* doctrine." [***id.***, page 4, lines 17 - 22; & page 5, lines 1 - 5]

2. In the same hereinabove order as the assertions and/or arguments **yet again presented by Irvin**, on behalf of these **very same** Defendants-Respondents whom he purports to represent, and **in nearly-identical manner** to his **clearly** "**frivolous**" and/or "**fraudulent**" pleadings within...

...United States District Court for the Middle Tennessee District-Nashville Division [Case No. 3:00cv1142], Akers hereby **re-states and reiterates** his "RESPONSE[S] and/or OBJECTION[S] thereto as follows:

> (A)(i) Irvin asserts that: "[Clark, Overstreet, Goodwine, Red Corn, Schwartz, & Ferguson] jointly move this Court to grant them judgement on the pleadings and dismiss them from this action based on lack of jurisdiction" and **Akers' response** is the same as it was every other time these Defendants-Respondents have attempted to raise this ludicrous defense, i.e., as follows:

I - JURISDICTION/VENUE [see, e.g., D.E. #78 at ¶ 2(B).I, page 4 thereof, as follows]

(i) Defendants Clark, Overstreet, Goodwine, Red Corn, Schwartz, and Ferguson assert "venue is improper in the United States District Court for the Middle District of Tennessee but would be proper in the United States District Court for the Eastern District of Kentucky at Lexington, where most of the defendants reside and all the significant alleged events in Akers' Complaint took place" [Docket Entry #38 at ¶ 4]. The Defendants Witt, Fleming, Layne, Vaughan, and Bishop assert essentially the same in their motions and memoranda [see Docket Entry #42 at ¶ 3; Docket Entry #31 at ¶ 5; #34 at ¶ 4; Docket Entry #51 at ¶ 2(ii); and Docket Entry #63 at Argument III, respectively].

(ii) Unquestionably, the "most significant events" alleged in Akers' Complaint occurred in the Federal District of Middle Tennessee at Nashville, i.e., interstate extortion, interstate fraud, interstate kidnapping/fraudulent extradition, additional interstate extortion and/or blackmail, interstate civil rights intimidation, and numerous violations of the civil rights of a citizen of the United States of America and State of Tennessee.

(iii) Taken at face value, the defendants' arguments, in themselves, would defeat Akers' extradition and subsequent convictions for "stalking" -- notwithstanding obvious elements of "fraud", "conspiracy", and "malice", *inter alia*.[1]

(iv) The Kentucky defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the defendants, thereby subjecting Akers to "more of the same" oppression and tyranny which gave rise to Akers' claims herein asserted and to facilitate additional violations of Titles 18 U.S.C. § 1961, et seq, & Titles 42 U.S.C. § 1983 & 1985 by those defendants.

(v) It is absolutely fascinating that all those herein defendants who are residents of the Commonwealth of Kentucky attempt to invoke defenses of "lack of personal jurisdiction", deficient "*in personam* jurisdiction", and/or "lack of subject matter jurisdiction" -- **the very common law principles which they concertedly ignored, circumvented, suppressed, and denied** throughout the process of fraudulently extraditing/kidnapping Akers from his home State of Tennessee, **then twice fraudulently prosecuting, convicting, and imprisoning him in the Commonwealth of Kentucky**. Apparently, those Kentucky defendants are of the misconception that the United States of America is a province of the "Commonwealth" of Kentucky **rather than the fact** that the "Commonwealth" of Kentucky is a "**territory**" **of the United States of America**

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[1] See Akers' Complaint at ¶¶ 2, 3(d) thru 3(g), 4(d), 5, 10(a) thru 10(w), 7 [(sic) - should be "11"], 12, 24, 31 thru 44, 47, 48 thru 50, 56, 58, 64 (see hereinafter FN9), 65, 66, 68, 70 thru 89, 91, 96 thru 104, 106 thru 112, 115, 117, 118, 121 thru 155, & "PRAYER(S) FOR RELIEF", Akers' Complaint; and ¶¶ A-2, A-3, A-4, E-1, E-2, E-4 with FN40 thereto, E-8, E-9, E-11, parallel ¶¶ E-12 together with FN41 thereto, E-24, E-31 thru E-44 with FN44 thru FN57 respectively thereto, E-47 together with FN59 thereto, E-48 through E-50 together with FN60 through FN62 respectively thereto, E-56, E-54 together with FN65 thereto, E-56 together with FN66 & FN67 thereto, E-58, E-64, E-65, E-66 together with FN70 & FN71 respectively thereto, E-68, E-70 through E-89 together with FN72 through FN95 respectively thereto, E-91 together with FN97 thereto, E-96 through E-104 together with FN101 through FN105 respectively thereto, E-106 through E-112 together with FN106 through FN127 respectively thereto, E-115 together with FN128 thereto, E-117 together with

FN131 thereto, E-118 together with FN133 thereto, and E-121 through E-129 together with FN134 through FN136 respectively thereto of Akers' Memorandum.

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and is, therefore, **subject to the Constitution and laws of the United States of America**. [see Title 18 U.S.C. § 5]

(vi) The Kentucky defendants allege that "[a]ll or nearly all of the fact witnesses are in Kentucky" and that is, simply, not the case. Akers' "case-in-chief" will require at least nine (9) expert witnesses who are residents and maintain offices in Middle Tennessee, together with approximately twenty (20) lay witnesses who are also residents of Middle Tennessee. All "fact witnesses" who are residents of Central Kentucky **have previously testified with respect to every conceivable matter** in Akers' two (2) criminal trials and all such testimony, to whatever extent relevant and admissible, can be utilized by the defendants as depositions or affidavits pursuant to F.R.E. 804.

(vii) In his initial pleading in this case [Docket Entry #20 at ¶ 7], Kentucky Assistant Attorney General D. Brent Irvin issued his "threat" to the effect that: "[in the event that the defendants' motions] to dismiss or transfer this case to United States District Court for the Eastern District of Kentucky at Lexington based on lack of jurisdiction and improper venue...is denied, the Attorney General's Office anticipates it would file an interlocutory appeal to the Sixth Circuit."[2]

(viii) Although it appears that the concept of "equity" is one which the Kentucky defendants either struggle with (or refuse to accept), Akers would remind the Kentucky defendants in this case that all those appellate options which are available to them are equally available to Akers.

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[2] **It is truly remarkable that it is this very same Kentucky Assistant Attorney General D. Brent Irvin, purportedly representing these very same Defendants-Appellees**, who now argues that an "interlocutory appeal" is not permissible under Federal Law.

II - *IN PERSONAM* JURISDICTION [see, e.g., D.E. #78 at ¶ 2(B).VI, page 16, as follows]

(i) This issue has been sufficiently addressed by Akers in his "RESPONSE TO DEFENDANTS' VARIOUS 'MOTION(S) FOR PERMISSION TO PRACTICE PRO HAC VICE'; 'MOTION(S) TO DISMISS'; 'MOTION(S) FOR CHANGE OF VENUE'; RAISED DEFENSES OF VARIOUS IMMUNITIES" served and filed on December 22, 2000. Once again, Akers did not dictate jurisdiction and/or venue for this action. The statutory provisions cited in
Akers' Complaint and his therewith contemporaneously-filed Memorandum did so. Akers did not author those cited statutes. The United States Congress did so. Akers is without province to alter or ignore those cited provisions and so are the Defendants. Moreover, the defendants' assertions respecting transfer of this case to Central Kentucky amounts to nothing more than a ploy to lure Akers back to the jurisdiction of those defendants in this case, and thereby subject Akers to "more of the same" tyranny and oppression which underly Akers' claims herein asserted.

(ii) **The Defendants allege that**:

(a) they lacked "certain minimum contacts" with the State of Tennessee; (b) "[no] acts of the defendants are alleged to have occurred in Tennessee"; and

(c) "[t]he allegations of the complaint reveal that Tennessee has no connection with the defendants and this court's *in personam* jurisdiction, running concurrent with that of the forum state fails."

(iii) **Akers contends that**:

(a) The defendants conveniently ignore (or attempt to mislead this Court with respect to) the fact that Akers was essentially kidnapped from the State of Tennessee (wherein Akers was, at the time, a citizen thereof and good standing therein) for no more than

attempting to exercise his rights under the Constitutions of the United States of America and State of Tennessee based entirely on "fraud", "conspiracy", and "malice", ***inter alia***, of the herein defendants. Once that act of kidnapping and/or fraudulent...

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...extradition had been effectuated, Akers was at the complete mercy of the defendants in this case.

(b) It is immaterial whether any of the presently identified defendants were physically in Tennessee. **The results were the same, i.e., violation of Akers' privileges and immunities secured by the Constitutions of the United States and the State of Tennessee; unlawful imprisonment of Akers; and injuries to Akers' in his person, property, and businesses as detailed in Akers' Complaint.**

(c) The defendants' arguments, taken at face value, in themselves would invalidate Akers' charge, extradition, and two subsequent convictions for "stalking" -- **not even taking into consideration the obvious elements of "fraud", "conspiracy", and "malice, *inter alia*.**[3]

(A)(ii) Irvin asserts that: "[Clark, Overstreet, Goodwine, Red Corn, Schwartz, & Ferguson] jointly move this Court to grant them judgement on the pleadings and dismiss them from this action based on failure to state any cognizable claims against them." **Akers responds** that a "judgement on the pleadings" would be warranted at this particular stage of this case, **but strongly disagrees with Irvin as to whom should be the beneficiary thereof and in which forum such a "judgement" should be entered.** Again, the factual allegations as contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18...

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[3] See ¶¶ 2, 3, 4, 5, 9, 10, 7 [sic (should be "11")], 12, 16, 32, 34, 37, 38, 39, 40, 43 through 47, 50 thru 52, 54, 56, 57, 58, 60 through 63, 64, 65 through 68, 70 through 95, esp. 96, 97 through 101, esp. 102, 103, 104, 107 through 112, 113, esp. 115, 117, 118, esp. 119 thru 127, 128 through 136, 138 through 142, 144 through 150; in conjunction with parallel ¶¶ 2, 3(g), 4, B-1, C, D-1, E-1, E-2, E-12, E-16, E-32, E-34, E-37, E-38, E-40, E-43 thru E-47, E-50 thru E-52, E-54, E-56, E-57, E-58, E-60 thru E-63, E-64, E-65 thru E-68, E-70 through E-95, esp. E-96, E-97 through E-101, esp. E-102, E-103, E-104, E-107 through E-112, E-113, esp. E-115, E-117, E-118, esp. E-119, & E-120 through E-127, together with all footnotes thereto, respectively, of Akers' Memorandum].

...U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [Case No. 3:00cv1142 therein] , when coupled with applicable Constitutional, Statutory, & Common Laws of the United States of America as cited within Akers' "MEMORANDUM & MEMORANDUM OF LAW" filed and served contemporaneously therewith on November 21, 2000, will speak for themselves. Except for Defendant Vaughan's denial that "he was a party to any alleged conspiracy [or] engaged in any unlawful conduct" [see USDC-MTD Case No. 3:00cv1142, D.E. #51 at ¶ II(B)(1), page 2, lines 6 & 7];[2] Defendant Kelly's denial that he has had any contact with Akers since September 23, 1994 [***id.***, D.E. #76, page 2, lines 8 & 9];[2] & Defendant-Respondent Bishop's denial of "the substantive allegations against her with the exception of any items which appear of public record" [USDC-EDKY Case No. 5:02cv0162, D.E. #2 at ¶ 3],[2] **not <u>even a single</u> Defendant-Respondent** has attempted to controvert **<u>even a single</u> averment** as contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" inasmuch as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes and the Defendants-Respondents **<u>cannot deny the factual allegations against them</u> without subjecting themselves to <u>still</u>**

further sanctions and/or penalties under Federal Law.

(B)(i) Irvin asserts that: "This is an action in which a *pro se* plaintiff, James G. Akers, [i] **generally** alleges violations of his civil rights pursuant to 42 U.S.C. §§ 1983, and 1985(3)." **Akers responds that** he has **specifically, and in extreme detail, alleged and shown** violations of his civil rights pursuant to 42 U.S.C. §§ 1983, and 1985(3). **Again**, the factual allegations contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. §..

...1985(3)" [USDC-TNMD Case No. 3:00cv1142 therein], when coupled with applicable Constitutional, Statutory, & Common Laws of the United States of America as cited within Akers' "MEMORANDUM & MEMORANDUM OF LAW" filed and served contemporaneously therewith on November 21, 2000, **will speak for themselves**.

(B)(ii) Irvin asserts that: "This is an action in which a *pro se* plaintiff, James G. Akers, asserts violations of the Racketeer Influenced and Corrupt Organizations Act ('RICO'), 18 U.S.C. § 1983(c)." **For once, Akers agrees with Irvin** and hereby re-states and reiterates his "response" within hereinabove ¶ 2(B)(i).

(C) (i) Irvin asserts that: "This is **at least** Akers' second federal civil suit." Akers responds that this is **exactly** "**Akers' second federal civil suit.**"

(C)(ii) Irvin asserts that: "The first civil suit was filed in the Eastern District of Kentucky **while Akers was still a prisoner**. See, Civil Action No. 99-173, styled *James G. Akers v. Commonwealth of Kentucky*. That case was screened **pursuant to the Prison Litigation Reform Act** and dismissed as frivolous by Chief Judge Henry R. Wilhoit, Jr." **Akers responds that** the "**operative**" **phraseology** here is: "**while Akers was still a prisoner**";

& "**pursuant to the Prison Litigation Reform Act**". The Honorable Henry R. Wilhoit, Jr., had no alternative but to dismiss Akers' then case, **without prejudice**, pursuant to the specific language contained within ***McGore v. Wrigglesworth,*** 114 F.3d, 610 (6th Cir. 1997); ***Kincade v. Sparkman,*** 117 F.3d 949 (6th Cir. 1997); and the habeas corpus statute discussed, in detail, in ***Heck v. Humphrey,*** 512 U.S. 477, 114 S.Ct. 2364.[4]

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[4] **Akers instant case is an entirely different matter** in that the Commonwealth of Kentucky **has not been named** as a Defendant; Akers is no longer "**in custody**"; and, therefore, **the Eleventh Amendment to the United States Constitution and the Federal habeas corpus statute no longer apply**.

(D) Irvin asserts that: "Most of the so called 'conspirators' gave the **crime victim** support." **Akers responds as follows**:

(i) First and foremost, it is crucial to understand exactly who is the actual "**crime victim**" and who the actual "**criminals**" are in the instant case. The following are excerpts from Akers' various pleadings as filed in the United States District Court for the Middle Tennessee District-Nashville Division, **as well as** the United States Court of Appeals for the Sixth Circuit:

> "On August 25, 1993, just two (2) months preceding the twenty-fifth (25th) anniversary of his marriage to Defendant Carolyn P. Bishop (nee Carolyn J. Patrick, then Carolyn P. Akers, now Carolyn P. Bishop, and referred to hereinafter as 'Bishop'), the Plaintiff, James G. Akers (hereinafter Akers') was awarded a sizeable cash settlement on behalf of Coleman/Akers & Akers, Incorporated (hereinafter "C/AA"), a Kentucky corporation owned an operated by Akers and based in the

Lexington, Kentucky, area. The series of outrageous events which have transpired thereafter, and as set forth hereinafter in detail, have been such that should shock the very conscience of any responsible citizen of a free and democratic society in the modern world.

In a manner strikingly similar to historical accounts of colonial Salem, Massachusetts; 'Nazi' Germany; and 'cold war era' Soviet Bloc countries, Defendant Bishop and her herein-after named co-conspirators have devised, effectuated, and perpetuated schemes to unlawfully seize, withhold, divert, and convert the property of Akers with intent to deprive him thereof; to unlawfully circumvent and/or abridge all of Akers' inalienable and lawful rights pursuant to, ***inter alia***, **Article I-Sections 9 & 10, Article III-Section 2, Article IV-Section 2**, and the **First, Fourth, Fifth, Sixth, Eighth, Thirteenth**, and **Fourteenth Amendments** of/to the **United** States **Constitution** and, in both overt and covert concealment of those said schemes, to oppressively deprive Akers of his liberty in such a manner as is hereinafter set forth in detail. Those said schemes and actions of and/or by the named herein Defendants **have not been limited** to 'civil rights violations' under 'color of state law', 'color of office', and/or 'malicious prosecution' but extend, in fact, to **criminal acts** in blatant and direct violation of the Federal Laws as hereinafter enumerated.

As will be hereinafter shown, in detail, the Plaintiff Akers was: (a) **assaulted, decoyed, inveigled, and robbed** in May and June of 1994 and, in the covert concealment thereof, was; (b) **unlawfully imprisoned** in May and July of 1994 and, in covert concealment thereof; (c) **blackmailed and/or extorted** from July of 1994 through March of 1995, and in further

concealment thereof; (d) **essentially 'kidnapped' and fraudulently held** in Nashville, Tennessee, during...

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...August and September, 1995, and, in the covert concealment thereof; (e) **fraudulently extradited** back to Kentucky in October of 1995 and, in the **further concealment** of the hereinbefore schemes; (f) **fraudulently and maliciously accused, prosecuted, convicted, and then imprisoned** in custody of the Fayette County [Kentucky] Sheriff and/or Kentucky Department of Corrections from May 22, 1996, until April 15, 1998, when; (g) Akers was released from custody on a $52,000 Full Cash Bond pursuant to an 'Opinion and Order', as rendered February 27, 1998, by the Kentucky Court of Appeals, which ruled that Akers' convictions and resulting imprisonment had been unlawfully achieved.

In the further concealment of those said schemes of/by the Defendants and, as an intentional **and continuing course of conduct** by them, Akers was: (a) **further blackmailed/ extorted** in March of 1998; was (b) **further** oppressively imprisoned in April of 1998; was (c) **further blackmailed and/or extorted** from April through October of 1998, and then; (d) **yet again, oppressively and unlawfully prosecuted, convicted, and then imprisoned** for the **very same unconstitutional and fraudulent felony charges**, pursuant to the **very same unconstitutional and fraudulent indictment**.

Following Akers' additional unlawful, oppressive, and unconstitutional imprisonment since October 28, 1998, the Court of Appeals of Kentucky rendered Its **second** 'Opinion' on May

19, 2000, in which It **reversed** (in part) Akers' convictions **for the second time** and ruling, in hereunto relevant part, as follows:

> **'It is clear that the trial court failed to follow our instructions on remand';**
>
> **'The court heard arguments as to the admissibility of the evidence. Prior to making its ruling, the court acknowledged that it had not read our decision';**
>
> **'Without reading our decision, the court could not have followed our directives';**
>
> **'While our opinion did not specifically so require, the trial court should have granted Akers separate trials on each count';**
>
> **'By not holding separate trials, the trial court abused its discretion and denied Akers a fair trial...';**
>
> **'Fairness and justice require us to reverse his** (Akers) **conviction...'** (emph. added)

Akers is **not** an attorney, and **does not** have any formal training or education in the Law. Having been forced to expend **vast resources** in defense of the hereinafter enumerated unlawful acts committed by the named Defendants, and ancillary expenses related thereto, Akers can no longer afford, nor will he seek, ...

...further assistance and/or counsel of attorneys

with respect to the matters set forth herein." [Case No. 3:00cv1142, D.E. #1, ¶¶ 1 - 6, pages 2 - 5 thereof];

"The defendants...allege Bishop to be the 'victim' of Akers[5] [supra, page 2, line 4]; and propound their 'paraphrased' version of Judge Wilhoit's 'MEMORANDUM OPINION AND ORDER'[6] in which they 'gloss over' Judge Wilhoit's findings that, in essence, Akers did 'not clearly set forth the jurisdictional basis" and that the Court was without jurisdiction until such time as Akers' convictions had been "declared invalid'. Both deficiencies have subsequently been remedied [see Akers' Complaint (generally) and Akers Memorandum at ¶ 119, page 169, together with footnote [134]]. Inasmuch as the Defendants Witt, Layne, and Vaughan assert essentially the same arguments in their motions and memorandums [Docket Entry #42 at ¶ 3; Docket Entry # 43 at [Argument] VII; & Docket Entry # 35 at ¶ B], Akers' 'response' is the same.

Moreover, Akers' allegations and claims against the herein defendants include, but [are] not limited to, 'conspiracy', 'robbery', 'forgery', 'mail fraud', 'wire fraud', 'interstate extortion/blackmail', 'interstate kidnapping and/or fraudulent extradition', 'jury tampering/fraud on the court', 'obstruction of justice', 'unlawful imprisonment', and numerous violations of Title 18 U.S.C. § 1961 (et seq.) and Titles 42 U.S.C. § 1983 & 1985. Not even a single one of those herein matters have been previously adjudicated and, in fact, have never even been raised prior to the filing of Akers' herein 'CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c), TITLE 42 U.S.C. 1983, & TITLE 42 U.S.C. § 1985(3)' on November 21, 2000." [Case No. 3:00cv1142, D.E. #78, ¶ (2)(B).II(i) & (iii), pages 7 - 9 thereof]

(ii) Secondly, **but of no less significance**, is to distinguish the differences between "so called 'conspirators' [giving] the [fraudulently self-proclaimed] crime victim support" and fraudulently, maliciously, overzealously, and/or otherwise unconstitutionally **twice convicting and twice unlawfully imprisoning** her alleged assailant by means of "abuse...

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[5] "**It is a matter of opinion who has been "victimized" by whom**. Ultimately, that issue may be one that only a **fair and impartial jury**, in a **fair and impartial courtroom setting**, and **presided over by a fair and impartial Judge** can decide and is, indeed, an issue inextricably intertwined with the relief Akers seeks in this civil action. **Perhaps Bishop has been "victimized"** in the matters raised in the Kentucky Courts. **The real question, however, is by whom -- by Akers, by herself, or by her co-defendants in this case**? On the other hand, **there can be no question whatsoever whether Akers has been "victimized"** [see Akers' Complaint and Memorandum (generally)] **or by whom**." [Case No. 3:00cv1142, D.E. #78, FN5, page 8 thereof (emphasis added)]

[6] "Unfortunately, Judge Wilhoit categorically accepted **Defendant Schwartz's fraudulent rendition of the facts** of the case at bar. [see Akers' Memorandum, ¶ E-91, page 123, together with corresponding footnote 97 thereto]" [Case No. 3:00cv1142, D.E. #78, FN6, page 8 thereof (emphasis added)]

...of process", "failure to provide equal protection under the law", "double jeopardy and/or multiple punishment", "lack of due process", "lack of jurisdiction", and "fraud on court", ***inter alia***, **all in violation of applicable provisions of the Constitutional, Statutory, & Common Laws of the United States** as are cited within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" and therewith "MEMORANDUM & MEMORANDUM OF LAW", as filed and served in United States District Court for the Middle District of Tennessee, on November

21, 2000 – **and without any legitimate evidence that a crime was even committed** absent unconstitutional ***ex post facto*** enhancement. [see, e.g., Akers' "Motion for Reconsideration", as filed in the Sixth Circuit of Appeals on December 10, 2001, ¶ (iii), page 12 thereof] i.e., as follows:

> "**By contrast** [to *Heck v. Humphry*], Akers did not 'kill' **anyone**. In fact, there is no legitimate evidence that Akers **did anything to Bishop** other than slap her for striking him in his groin – under the influence of 'extreme emotional disturbance' as the result of Bishop's previous abuse of Akers' grandchildren. The **only injury to Bishop** which can be directly attributed to Akers was a 'slightly-swollen lip' and there is no legitimate evidence that Akers 'intended' to cause Bishop even **that injury**.[7] **Akers' conviction for 'First Degree Assault' has been reversed twice by the Kentucky Court of Appeals as unlawful**. Akers is **no longer 'in custody' and should never have been.**"

(E) Irvin asserts that: (i) "After [Akers] **two criminal convictions were reversed in part and affirmed in part (the stalking conviction was affirmed after the second appeal), Akers ultimately pleaded guilty** on July 7, 2000, to assault under extreme...

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[7] "**Even under Kentucky law (particularly K.R.S. 508.040)**, Akers' so-called act of "assault" of Bishop was punishable for only **a maximum fine of $250 and/or 90-day sentence in the county jail** [see "OFFENSE, PENALTY AND BAIL SCHEDULE", APPENDIX A, Kentucky Rules of Court, 1995, West Publishing Company, November 1, 1994] absent unconstitutional ***'ex post facto'* enhancement** under disguise of implementing, evolutionizing, and/or 'testing the mettle' of Kentucky's newly-enacted/enhanced 'Domestic Violence & Abuse' laws and, **only then, if proceedings had been initiated within the one (1) year statutory period required by K.R.S. 500.050(2).**" [see, e.g., Akers' "Motion for Reconsideration", as filed in the Sixth Circuit of Appeals on December 10, 2001, FN8, page 12 thereof]

...emotional disturbance, a class D Felony. Complaint ¶ 121. [ii] These convictions have never been vacated, reversed, or set aside." **In response, Akers hereby re-states and reiterates** his assertions contained within, e.g., Akers' "Motion for Reconsideration", as filed in the Sixth Circuit of Appeals on December 10, 2001, ¶ (i), page 17 thereof, i.e., as follows:

> "**Not only have Akers' convictions been 'reversed', but his outrageous 'First-degree Assault' conviction has been reversed twice -- by the Kentucky Court of Appeals**. Akers' "First-degree Stalking" conviction was reversed once, but was affirmed after second conviction based upon, ***inter alia***, the fraudulent testimony of Kelly's co-defendants coupled with, and augmented by, the unconstitutional, fraudulent, and otherwise unlawful acts of Defendants Red Corn, Overstreet, and Ferguson.[8] The mere fact that Akers' was forced to enter an **unconstitutional 'guilty plea'** for 'Assault under Extreme Emotional Disturbance' on July 7, 2000,[9] in order to free himself from the 'tyranny and oppression' of the herein Defendants **does not relieve any of those defendants of any liabilities under Title 18 U.S.C. § 1964(c), Title 42 U.S.C. § 1983, or Title 42 U.S.C. § 1985(3)**.[10]

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[8] "**See especially (re: 'Stalking' charge)**: '***Ex post facto* law' defined** [Akers' Memorandum, page 6]; **Walton v. State**, 1977, 566 P.2d 765, 98 Idaho 422; **Ross v. Hegstrom**, 1969, 254 A.2d 556, 107 Conn. 403; **State v. Phillips**, 1960, 162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63; **People v. ex rel. Johnson v. Ruthazer**, 1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905; **Clayton v. Michael**, 1966, 141 N.W. 2d 538, 258 Iowa 1037; **Wigehert v. Lockhart**, 1946, 166 P.2d 988, 114 Colo. 485; **Ex parte Foster**, 1936, 61 P.2d 37, 60 Okla.Cr. 50; **Pierce v. Creecy**, Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113; **Ex parte Morgan**, D.C.Cal. 1948, 78

F.Supp. 756, affirmed 175 F.2d 404, cert. denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed. 503; **Ex parte Montoya**, 1943, 135 P.2d 281, 170 Or. 499 [id., FN2, page 6]; **'Due process of law defined'** [id., FN5, page 8]: 'Equal protection of the law' defined [id., FN6, page 11]; 'Fraud' defined [id., FN7, page 13]; **Title 18 U.S.C. §§ 2261A, 2262, & 2265** [id., pages 15 & 16]; **CONSTITUTION OF TENNESSEE: ARTICLE 2, SECTION 8** with FN14 thereto [id., pages 18 & 19] and **ARTICLE 1, SECTION 14** with FN16 thereto [id., page 19]; **TENNESSEE CRIMINAL CODE**: '**39-17-308. Harassment**' [id., page 21] and "39-17-309. Civil rights intimidation" with FN21 thereto [id., page 22] & FN22 [id., page 23]; and **KENTUCKY REVISED STATUTES: '500.060 Territorial applicability'** with FN32 thereto [id., pages 31 & 32]; '**508.140 Stalking in the first degree**' with FN38 thereto [id., page 36]." [***id.***, FN12, page 17 thereof]

[9] "**See especially (re: 'Assault' charge)**: **North Carolina v. Pearce**, 89 S.Ct. 2089 (1969) [Akers' Memorandum, FN4, pages 8 thru 10], i.e., 'The theory of double jeopardy is that a person need only run the gantlet once. The gantlet is the risk of punishment which the state...imposes for that particular conduct. He risks maximum permissible punishment when first tried. That risk having been faced once need..." (continued, page 18 hereof)

[10] "See, e.g., **North Carolina v. Pearce** [Akers' Memorandum at FN4]; **Menna v. New York** [id.]; **Abney v. United States** [id.]; **Benton v. Maryland**; [id., FN134]; and **Heck v. Humphrey** [hereinafter ¶ 2(b)III]." [***id.***, FN14, page 16 thereof]

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(F) Irvin asserts that: "Movants herein filed such a motion on December 18, 2000 [D.E. 38] supported by a memorandum of law [D.E. 39] wherein they asserted various defenses including (i) res judicata, (ii) collateral estoppel, (iii) the *Heck v. Humphry* doctrine, (iv) the *Rooker-Feldman* doctrine, or (v) based on their absolute Eleventh Amendment immunities, (vi) judicial immunities, (vii) prosecutorial immunities, or (viii) federal qualified immunities from suit". **In response, Akers hereby re-states and...**

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[9] (continued from page 15 hereof): "... not be faced again. And **the fact that he takes an appeal does not waive his constitutional defense of former jeopardy** to a second prosecution. Green v. United States, 355 U.S. 184, 191-

193, 78 U.S. S.Ct. 221, 225, 227, 2 L.Ed.2d 199.' ...'In Ex parte Lange, 18 Wall. 163, 21 L.Ed. 872, the petitioner...[736]...**had already suffered complete punishment for his crime and could not be subjected to further sanction**.' [737] 'The ban on double jeopardy has its deep roots in the history of occidental jurisprudence. 'Fear and abhorence of government power to try people twice for the same conduct is one of the oldest ideas found in western civilization'. Bartkaus v. Illinois, 359 U.S. S.Ct. 121, 151-155, 79 S.Ct. 676, 3 L.Ed.2d (Black, J., dissenting). **It prevents the State from using the criminal process as an instrument of harrassment** to wear the accused out by a multitude of cases with accumulated trials. Abbate v. United States, 359 U.S. S.Ct. 666, 672-673, 3 L.Ed.2d, 72.' ''The vice [735] of this procedure lies in relitagating the same evidence before two different juries with a man's innocence or guilt at stake'. '**Harrasment of an accused by successive prosecutions...so as to afford the prosecution a more favorable opportunity to convict are examples when jeopardy attaches**. Downum v. United States, 372 U.S. 734, 736, 83 S.Ct. 1033, 1034, 10 L.Ed.2d 100. ...'**This case presents an instance of the prosecution being allowed to harass the accused with repeated trials and convictions on the same evidence, until it achieves its desired result**...' Ciucci v. Illinois, 356 U.S. 571, 573, 78 S.Ct. 839, 840, 2 L.Ed.2d 983. ...It is doubtless true that the State has an interest in adjusting sentences upward 737 when it discovers new evidence warranting that result. But **the individual has an interest in remaining free of double punishment**. And in weighing those interests against one another, **the Constitution has decided the matter in favor of the individual**. See United States v. Tateo, 377 U.S. 463, 475, 84 S.Ct. 1587, 1594, 12 L.Ed.2d, 448" (emphasis added). **See also: Menna v. New York**, 423 U.S. 61, 96 S.Ct. 241, 46 LEd(2d) 195 (1975), i.e., 'Where the State is precluded by the United States Constitution from haling a defendant into court on a charge, **federal law requires that conviction to be set aside even if the conviction was entered pursuant to a counseled plea of guilty**.' (emph. added); **Abney v. United States**, 431 U.S. 651, 97 S.Ct., 52 L.Ed(2d) 651 (1977), i.e., 'Double jeopardy clause protects an individual against more than being subjected to double punishments; it is a guarantee against being twice put to trial for the same offense. U.S.C.A Const. Amend. 5' (emphasis added); **Fourteenth Amendment** to the United States Constitution [id., 10 & 11], i.e., '**No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States**; ...nor deny any person within its jurisdiction equal protection of the laws'. (emphasis added); and **Benton v. Maryland**, 89 S.Ct. 2056 (1969), i.e., '9. Double jeopardy prohibition of the Fifth Amendment represents **fundamental ideal in constitutional heritage and it applies to the states through the Fourteenth Amendment**; overruling Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149, U.S.C.A. Const. Amends. 5, 14. 11. Idea underlying constitution **prohibition against double jeopardy is that state with all its resources and powers** should not be allowed to make **repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrasment, expense and ordeal and compelling him to live in a continued state of anxiety and insecurity, as well as enhancing possibility that even though innocent he may be found guilty**. U.S.C.A. Const. Amend.5.' (emphasis added)" [***id.***, FN13, page 17 & 18 thereof]

...**reiterates** his "Responses" and/or "Objections" thereto as contained within, e.g., Akers' "Motion for Reconsideration", as filed in the Sixth Circuit of Appeals on December 10, 2001, i.e., as follows:

(i)/(ii) RES JUDICATA/COLLATERAL ESTOPPEL [see also, e.g., D.E. #78, ¶ (2)(B).II, i.e.]

"Defendants Clark, Overstreet, Goodwine, Red Corn, Schwartz, and Ferguson assert the doctrines of *res judicata* and/or collateral estoppel on the purported grounds that Akers had previously 'filed a similar civil rights complaint in 1999 in the United States District Court for the Eastern District of Kentucky, while incarcerated at Eastern Kentucky Correctional Complex in West Liberty, Kentucky' and '[t]hat case was screened pursuant to the Prison Litigation Reform Act, and *sua sponte* dismissed as frivolous, without prejudice, by Chief Judge Henry R. Wilhoit, Jr.' [see Irvin's 'MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER VENUE OR DISMISS FOR LACK OF VENUE, LACK OF PERSONAL JURISDICTION, AND FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED', Docket Entry #39, ¶¶ A & B]. The defendants then allege Bishop to be the 'victim' of Akers[11] [supra, page 2, line4]; and propound their 'paraphrased' version of Judge Wilhoit's 'MEMORANDUM OPINION AND ORDER'[12] in which they 'gloss over' Judge Wilhoit's findings that, in essence, Akers did 'not clearly set forth the jurisdictional basis" and that the Court was without jurisdiction until such time as Akers' convictions had been 'declared invalid'. Both deficiencies have subsequently been remedied [see Akers' Complaint (generally) and Akers Memorandum at ¶ 119, page 169, together with footnote 134]. Inasmuch as the Defendants Witt, Layne, and Vaughan assert essentially the same arguments in their motions and memorandums [Docket Entry #42 at ¶ 3; Docket Entry # 43 at [Argument] VII; & Docket Entry # 35 at ¶ B], Akers' 'response' is the same.

To whatever extent any of the defendants argue that Akers' guilty plea of July 7, 2000, operates as a bar under the doctrine of *res judicata*/collateral estoppel, that argument is sufficiently addressed in Akers' Memorandum at ¶ 121 (together with corresponding footnotes 134 & 135 thereto.

Moreover, Akers' allegations and claims against the herein defendants include, **but [are] not limited to**, 'conspiracy', 'robbery', 'forgery', 'mail fraud', 'wire fraud', 'interstate extortion/blackmail', 'interstate kidnapping and/or fraudulent extradition, 'jury tampering/fraud on the court', 'obstruction of justice', 'unlawful imprisonment', and numerous violations of Title 18 U.S.C. § 1961 (et seq.) and Titles 42 U.S.C. § 1983 & 1985. **Not even a single one of those...**

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[11] **"It is a matter of opinion who has been 'victimized' by whom.** Ultimately, that issue may be one that only a fair and impartial jury, in a fair and impartial courtroom setting, and presided over by a fair and impartial Judge can decide and is, indeed, an issue inextricably intertwined with the relief Akers seeks in this civil action. Perhaps Bishop has been 'victimized' in the matters raised in the Kentucky Courts. **The real question, however, is by whom** -- by Akers, by herself, or by her co-defendants in this case? On the other hand, **there can be no question whatsoever whether Akers has been "victimized"** [see Akers' Complaint and Memorandum (generally)] **or by whom."** [id.]

[12] "Unfortunately, Judge Wilhoit categorically accepted Defendant Schwartz's fraudulent rendition of the facts of the case at bar. [see Akers' Memorandum, ¶ E-91, page 123, together with corresponding footnote 97 thereto]" [*id.*] **herein matters have been previously adjudicated** and, in fact, **have never even been raised** prior to the filing of Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c), TITLE 42 U.S.C. 1983, & TITLE 42 U.S.C. § 1985(3)" on November 21, 2000.

...**herein matter have been previously adjudicated** and, in fact, have never even been raised prior to the filing of Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" and

therewith "MEMORANDUM & MEMORANDUM OF LAW", as filed and served in United States District Court for the Middle District of Tennessee, on November 21, 2000.

(iv) Therefore, all of the herein Defendants arguments with respect to "defenses" pursuant to the doctrines of *res judicata* and/or collateral estoppel can only be construed as frivolous attempts to undermine and/or subvert the very essence, spirit, intent(s), and purpose(s) of those constitutional and statutory authorities cited in Akers' Complaint and Memorandum." [*id.*, pages 16 & 17 thereof]

(iii) HECK V. HUMPHREY [see also, e.g., D.E. #78 at ¶ (2)(B).III, page 10, as follows:]

"The Defendants Clark, Overstreet, Goodwine, Red Corn, Schwartz, and Ferguson rely upon **Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364**, as authority for dismissal of Akers' Complaint [see Docket Entry #38 at page 16]. Defendants Witt, Fleming, Layne, Shannon, Bishop, and Rushing assert essentially the same in their individual motions and memoranda [Docket Entry #43 at (Argument) I; Docket Entry #31 at ¶ 9; Docket Entry #35, pages 16 & 17; Docket Entry #43 at (Argument) I; Docket Entry #63 at page 9, lines 1 thru 3; & Docket Entry #71 at ¶, respectively]. **The Defendants completely miss the point of *Heck v. Humphrey*.**

Heck was convicted of 'voluntary manslaughter' for killing his wife. His conviction has never been reversed and, in fact, was affirmed by Indiana's Court of Appeals and Supreme Court. Heck remained 'in custody' during the entire time of his civil action pursuant to Title 42 U.S.C. § 1983. There was no question as to whether the state of Indiana had both 'personal jurisdiction' and 'subject matter jurisdiction' over Heck and his prosecutions. Therefore, **the sole remedy available to Heck was habeas corpus under Federal law.**

By contrast, Akers did not 'kill' **anyone**. In fact, there is no legitimate evidence that Akers **did anything to Bishop** other than slap her for striking him in his groin - under the influence of 'extreme emotional disturbance' as the result of Bishop's previous abuse of Akers' grandchildren. The **only injury to Bishop** which can be directly attributed to Akers was a 'slightly-

swollen lip' and there is no legitimate evidence that Akers 'intended' to cause Bishop even **that injury.**[13] **Akers' conviction for 'First Degree Assault' has been reversed twice by the Kentucky Court of Appeals as unlawful. Akers is no longer 'in custody' and should never have been.** Habeas corpus is no longer a remedy available to Akers and only Title 42 U.S.C. § 1983 remains so available. Moreover, ***Heck v. Humphrey*** **does not even address any claims comparable to those asserted by Akers** pursuant to Titles 18 U.S.C. § 1961, et seq, & Title 42 U.S.C. § 1985. *Heck v. Humphrey* just simply does not apply to Akers' herein case except with respect to its language as follows:

> [3] In general, exhaustion of state remedies is not a prerequisite to action under § 1983, even in action by state prisoner. 42 U.S.C.A. 1983.
>
> [5] Preiser, which held that habeas corpus is exclusive remedy for state prisoner who challenges fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within literal terms of § 1983; did not create [an] exception to "no exhaustion" rule of § 1983; it merely held that certain claims by...

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[13] See hereinabive FN7, page 14 hereof.

> ...state prisoners are not cognizable under that provision and must be brought in habeas corpus proceedings, which do not contain exhaustion requirement. 42 U.S.C.A § 1983; 28 U.S.C.A. § 2254.
>
> [6] Common-law cause of action for malicious prosecution, unlike related cause of action for false arrest and imprisonment, permits damages for confinement imposed pursuant to legal process.
>
> [7] Successful malicious prosecution plaintiff may recover in addition to general damages, compensation for any arrest or imprisonment, including damages for

discomfort or injury to his health, or loss of time and deprivation of society.

[11] Favorable termination of prior proceedings is not element of abuse of process cause of action.

[12] Gravamen of tort of abuse of process is not wrongfulness of prosecution, but some extortionate perversion of lawfully initiated process to illegitimate ends.

[18] If district court determines that § 1983 plaintiff's action, even if successful, will not demonstrate invalidity of any outstanding criminal judgement against plaintiff, action should be allowed to proceed, in absence of some other bar to suit. 42 U.S.C.A. § 1983.

[22] State courts are bound to apply federal rules in determining preclusive effect of federal-court decisions on issues of federal law.

CONCURING OPINION
Justice SOUTER, with whom Justice BLACKMUN, Justice STEVENS, and Justice O'CONNER join, concurring in the judgement.

FN3. Some of the traditional common-law requirements appear to have liberalized over the years, see Prosser and Keeton 882 ("There is a considerable minority view which regards the conviction as creating only a presumption, which may be rebutted by any competent evidence showing that probable cause for the prosecution did not in fact exist"), strengthening the analogy the Court draws. ...[The] **Reconstruction-era common law recognizes a limited exception to the rule denying a malicious prosecution plaintiff benefit of the invalidation of his conviction: an exception for convictions "obtained by some type of fraud."** (emphasis added) Ante, at 2371, n. 4 (citing *Crescent City Live Stock Co. v Butcher's Union Slaughter-House Co.*, 120 U.S. 141, 151, 7 S.Ct. 472, 477, 30 L.Ed. 614 (1887) *Preiser v. Rodriguez*, 411 U.S. 475 93 S.Ct.1827, 36 L.Ed.2d 439 (1973) e.g., Young v. Kenny, 907 F.2d 874, 875-876 (CA9

1990) Preiser, Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) Wollf v. McDonnel, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) ante, *498 at 2369-2370.

FN4. ...If...individuals...like state prisoners, were required to show the prior invalidation of their conviction or imprisonment, the result would be to deny any federal forum for claiming deprivation of federal rights to those who cannot first obtain a favorable state ruling. The reason, of course, is that **individuals not "in custody" cannot invoke federal habeas jurisdiction, the only statutory mechanism besides § 1983** by which individuals may sue state officials in federal court for violating federal...

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...rights. That would be an untoward result. ...*501 It is one thing to adopt a rule that forces prison inmates to follow the federal habeas route with claims that fall within the plain language of § 1983 when that is necessary to prevent a requirement of the habeas statute from being undermined. That is what the Court did in *Preiser v. Rodriguez*, 411 U.S., at 489-492, 93 S.Ct., at 1836-1838, and that is what the Court's rule would do for state prisoners. Harmonizing § 1983 and the habeas statute by requiring a state prisoner **2380 seeking damages for unconstitutional conviction to establish the previous invalidation of his conviction does not run afoul of what we have called, repeatedly, "[t]he very purpose of" § 1983: "**to interpose the federal courts between the States and the people, as guardians of the people's federal rights.**" *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972); see also Pulliam v. Allen, 466 U.S. 522, 541, 104 S.Ct. 1970, 1980-1981, 80 L.Ed.2d 565 (1984) *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972); Patsy v. Board of Regents of Fla., 457 U.S. 496, 503, 102 S.Ct. 2557, 2561,

73 L.Ed.2d 172 (1982). A prisoner caught at the intersection of § 1983 and the habeas statute can still have his court; and, depending on the circumstances, he may be able to obtain § 1983 damages. It would be an entirely different matter, however, to shut off federal courts altogether to claims that fall within the plain language of § 1983. "[I]rrespective of the common law support" for a general rule disfavoring collateral attacks, the Court lacks the authority to do any such thing absent unambiguous congressional direction where, as here, reading § 1983 to exclude claims from federal court would run counter "to § 1983 history" and defeat the statute's "purpose." Wyatt v. Cole, 504 U.S., at 158, 112 S.Ct., at 1828. Consider the case of a former slave framed by Ku Klux Klan-controlled law-enforcement officers and convicted by a Klan-controlled state court of, for example, raping a white woman; and suppose that the unjustly convicted defendant did not (and could not) discover the proof of unconstitutionality until after his *502 release from state custody. If it were correct to say that § 1983 independently requires a person not in custody to establish the prior invalidation of his conviction, it would have been equally right to tell the former slave that he could not seek federal relief even against the law-enforcement officers who framed him unless he first managed to convince the state courts that his conviction was unlawful. That would be a result hard indeed to reconcile either with the purpose of § 1983 or with the origins of what was "popularly known as the Ku Klux Klan Act," *Collins v. Hardyman*, 341 U.S. 651, 657, 71 S.Ct. 937, 939, 95 L.Ed. 1253 (1951), the statute having been enacted in part out of concern that many state courts were "in league with those who were bent upon abrogation of federally protected rights," *Mitchum v. Foster*, supra, 407 U.S., at 240, 92 S.Ct., at 2161; ef. Cong. Globe, 42d Cong., 1st Sess.., 577 (1871)(Sen. Trumbull explaining that, under the Civil Rights Act of 1871, "**the Federal Government has a right to set aside...action of State authorities" that deprives**

person of his Fourteenth Amendment rights"). It would also be a result unjustified by the habeas statute or any other post-§ 1983 enactment. Nor do I see any policy reflected in a congressional enactment that would justify denying to an individual today federal damages...merely because he was unconstitutionally fined by a State, or **to a person who discovers after his release from prison that, for example, state officials withheld** exculpatory material. And absent such a statutory policy, surely the common law can give us no authority to narrow the "broad language" of § 1983, which speaks of deprivations

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of "any" constitutional rights, privileges, or immunities, by "[e]very" person acting under color of state law, and to which "we have given full effect [by] recognizing that § 1983 'provide[s] a remedy, to be broadly construed, against all forms of official violation of federally protected rights.'" *Dennis v. Higgins*, 498 U.S. 439, 443, 445, 111 S.Ct. 865, 869-870, 112 L.Ed.2d 969 (1991)(quoting *Monell v. New York City Dept. of Social Svcs.*, 436 U.S. 658, 700-701, 98 S.Ct. 2018, 2040-2041, 56 L.Ed. 611 (1978). *503 In sum, while the malicious-prosecution analogy provides a useful mechanism for implementing what statutory analysis requires, congressional policy as reflected in enacted statutes must ultimately be the guide. I would thus be clear that the proper resolution **2381 of this case (involving, of course, a state prisoner) is to construe § 1983 in light of the habeas statute and its explicit policy of exhaustion. **I would not cast doubt on the ability of an individual unaffected by the habeas statute to take advantage of the broad reach of § 1983**.

END OF DOCUMENT [Copr. (C) West 2000 West Group. No claim to orig. U.S. govt. works.] (emphasis added)

(iv) ROOKER-FELDMAN [see also, e.g., D.E. #78 at ¶ (2)(B).IV, page 15 thereof, as follows]

> (i) Attached and appended as "Exhibit One" thereto Akers' "RESPONSE AND/OR OBJECTIONS TO [DEFENDANT] BISHOP'S 'MOTION FOR PERMISSION TO FILE AN AMENDED MOTION TO DISMISS' & ACCOMPANYING 'MEMORANDUM IN SUPPORT [THEREOF]'" filed and served on January 22, 2001 [Docket Entry #68], was a complete copy of Rooker, et al., v. Fidelity Trust Co., et al., 263 U.S. 413, 44 S.Ct. 149; and District of Columbia Court of Appeals, et al., v. Marc Feldman and Edward J. Hickey, Jr., 460 U.S. 462, 103 S.Ct. 1303. Again, with all due respect, Akers can see no proper application to the herein case. To whatever extent the herein defendants argue that any such application exists, Akers asserts that any/all similarities are overridden by hereinabove language of *Heck v. Humphrey* in conjunction with Title 18 U.S.C. § 1961, et seq., Title 42 U.S.C. §§ 1983 & 1985, together with the authorities in support thereof as cited in Akers' Complaint and Memorandum.[14]

(v) - (viii) VARIOUS CLAIMS OF IMMUNITIES [see, e.g., D.E. #78, ¶ (2)(B).V, page 15]

(i) Defendant Kelly acknowledges that he is not entitled to any immunities in this action. However, to whatever extent he supports the arguments of any of his co-defendants respecting any such alleged immunities, Akers hereby responds that neither are any of Kelly's co-defendants entitled to immunities inasmuch as they have committed unlawful acts in their private capacities and, then, perpetuated those acts in their official capacities, without "personal" or "subject matter" jurisdiction. [see, e.g., Robichaud v. Roman, C.A. 9 (Ariz.) 1965, 351 F.2d 533, i.e., "Title of...

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[14] Akers would also hasten to add that the herein Defendants conveniently ignore a key element of the Court's ruling in **Rooker, et al., v. Fidelity Trust Co., et al.**, 263 U.S. 413, 44 S.Ct. 149, i.e., "Where constitutional questions actually arose in a cause **in which a state court had jurisdiction of the**

subject-matter and of the parties..." [id., HN228]. In the instant case, **it is clear that the Kentucky Court's had neither**.

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...office, quasi-judicial or even judicial, does not of itself immunize officer from claim of damages under this [Title 42 U.S.C. § 1983] (emphasis added); Henzel v. Gerstein, C.A. 5 (Fla.) 1979, 608 F2d 654, i.e., "The 'absence of jurisdiction' exception to rule that a judge is absolutely immune from civil rights damage liability for acts within his judicial capacity, except when he acts in absence of all jurisdiction, refers to situations in which a judge acts purely in a private capacity" (emphasis added); and Sparks v. Duval County Ranch Co., C.A.5 (Tex.) 1979, 604 F.2d 976, affirmed 101 S.Ct. 183 449 U.S. 24, 66 L.Ed. 2d 185, i.e., "Rule of judicial immunity from damages, with a single bright-line exception, *viz.*, a judge is not protected if he acts in 'clear absence of all jurisdiction', is as broad as, but no broader than, necessary." (emphasis added)

(F)(ix) Irvin asserts that: "Movants herein filed such a motion on December 18, 2000 [D.E. 38] supported by a memorandum of law [D.E. 39] wherein they asserted various defenses including...the one year statute of limitations". **Akers responds that**: **It has long been well-established** that the Sixth Circuit Court of Appeals recognizes the limitation period for filing an action pursuant to the R.I.C.O Act to be **four years after the last known "injury to the Plaintiff's business or property"** (in most other Circuits, that period is recognized to be five years). **In every Federal Circuit**, the limitation period for filing an action pursuant to Title 42 U.S.C. § 1985 has always been "well-established" to be **two years** following the last "overt act" in furtherance of the alleged conspiracy. The limitation period for filing an action pursuant to Title 42 U.S.C. § 1983, likened to a tort for malicious prosecution, has **as well been consistently held to be two years**. Even a "cursory" review of the facts of this case reveals it was initiated

well within applicable statutes of limitations. Akers hereby challenges Kentucky Assistant Attorney General D. Brent Irvin **to cite any authority, whatsoever,** to support his assertion of a "**one year statute of limitations**".

(F)(x) Irvin asserts that: "Any of these defenses are sufficient to defeat all of Akers claims against movants." **Akers responds that**: that would be true if "any of these defense" were legitimate. However, **every one** is either "**frivolous**" and/or "**fraudulent**".

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(F)(xi) Irvin asserts that: "The *Heck* doctrine, *res judicata*, absolute witness immunity and statute of limitations defenses should bar his claims against the remaining defendants who may not be state actors." **In response, Akers re-states and reiterates** his "**responses**" and/or "**objections**" within hereinabove ¶¶ 2(F)(iii) & 2(F)(iv) [pages 18 - 22 hereof], ¶ 2(F)(ix) [page 21-22 hereof], and ¶ 2(F)(ix) [page 22 hereof]. With respect to any alleged "absolute witness immunity", **Akers' response** is the same as it was every other time any of the Defendants-Respondents have attempted to assert this outrageous defense [see, e.g., Case No. 3:00cv1142, D.E. #75, pages 21 -23 thereof], i.e.,

VARIOUS CLAIMS OF IMMUNITIES

It is preposterous for the herein defendants to assert that the Eleventh Amendment (or any other provision) to the United States Constitution was ever intended to afford immunities for criminal acts or, indeed, **any other act** in direct violation or contravention thereof. Moreover, it is Akers' position that the fraudulent extradition and/or kidnapping of Akers from his home State of Tennessee effected a "constructive waiver" of sovereign immunities;[15] that the lack of "subject matter" and "personal" jurisdiction in so doing

constituted an "absolute waiver" of sovereign immunities;[16] that representation of any of the herein defendants by the Attorney General's Office of the Commonwealth of Kentucky constitutes an "intentional and actual waiver" of sovereign immunities; and that the obvious elements of "fraud", "conspiracy", and "malice", ***inter alia***, pervasive within the activities of the remaining defendants invalidates any claims of immunities by them. **A representative analogy would be**:

> Parties B through Z conspire to and, in fact, carry out the criminal act of robbing Victim A. An integral part of the conspiracy of Parties B through Z is an agreement that, in order to prevent Victim A from filing criminal charges against them, Parties B through Z will devise, implement, and effectuate fraudulent criminal charges **against Victim A** so that; when Parties B through Z are called to and, in fact, do testify against Victim A in his criminal trial, Parties B through Z (who are the actual criminals in the overall matter) acquire immunities from their testimony against Victim A; then assert a defense of "qualified immunity" against...

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[15] See Akers' Complaint at ¶¶ 56 through 68, & ¶¶ 70 through 79; and parallel ¶¶ E-56 through E-68 together with footnotes **66** through **71** thereto, E-70 thru E-79 together with footnotes **72** through **75** thereto of accompanying Memorandum; **and hereinabove FN8**.

[16] See Akers' Memorandum at ¶ 81 together with footnotes **81** & **82** thereto; **and hereinabove FN8**.

> ...prosecution for "conspiracy" against and "robbery" of Victim A.[17]

Surely, the common law permits no such immunities for Parties B thru Z.

(G) Irvin asserts that: "It is anticipated that most of the defendants will waive their rights to file briefs in opposition to [Akers'] petition for writ of certiorari, given that the law is settled and further briefing is not necessary." **Akers responds that** the simple truth of the matter is that **these Defendants-Respondents cannot** "file briefs in opposition to [Akers'] petition for writ of certiorari" inasmuch as **they cannot present even a single meritorious argument or authority in support thereof** just like they could not file any meritorious "Brief for Appellee[s]" within the Sixth Circuit Court of appeals and **cannot controvert even a single averment** within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)".

(H)(i) Irvin argues that: "This case is ripe for consideration of the jurisdictional... defenses previously asserted in the United States District Court for the Middle District of Tennessee." **In response, Akers re-states and reiterates** his "**responses**" and/or "**objections**" within hereinabove ¶¶ 2(A)(i)(I) & 2(A)(i)(II) [pages 4 - 8 hereof].

(H)(ii) Irvin argues that: "This case is ripe for consideration of the...immunity defenses previously asserted in the United States District Court for the Middle District of Tennessee." **In response, Akers re-states and reiterates** his "**responses**" and/or "**objections**" within hereinabove ¶¶ 2(F)(v) - (viii); & 2(F)(xi) [pages 21 - 24 hereof].

(I)(i) Irvin argues that: "A prompt ruling on these threshold jurisdictional and immunity issues will promote judicial economy". **In response, Akers again re-states**...

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[17] **See hereinabove FN1**, page 5 hereof.

...**and reiterates** his "**responses**" and/or "**objections**" within hereinabove ¶¶ 2(F)(v) - (viii); & 2(F)(xi) [pages 21 - 24 hereof] but would also, **again, point out** that Kentucky's Assistant Attorney General D. Brent Irvin is now attempting to usurp the appellate function of the **United States Supreme Court** in like manner to that in which those Defendants-Respondents he purports to represent have heretofore **consistently usurped the Constitution and Laws of the United States of America as well as those of the State of Tennessee and their very own Commonwealth of Kentucky**

(I)(ii) Irvin argues that: "A prompt ruling on these threshold jurisdictional and immunity issues will ...avoid requiring Akers and his witnesses to travel to Kentucky where he fears such travel expenses will cause 'all of his resources [being] depleted'". **Akers responds that**: Irvin still doesn't seem to get the picture here. **Akers "resources" were depleted long ago by these Defendants** - to the tune of **in excess of ONE MILLION, EIGHTY THOUSAND DOLLARS ($1,080,000.00)**. The only questions yet remaining is the amount/nature of additional damages they will inflict upon Akers' person, property, and businesses as the proximate result of their violations of Title 18 U.S.C. § 1964(c); and Title 42 U.S.C. §§ 1983 &1985(3) together with Akers' resulting litigation costs.

(I)(iii) Irvin argues that: "A prompt ruling on these threshold jurisdictional and immunity issues will ...should also alleviate Akers fear that if he returns to Kentucky he will be subjected to additional criminal charges if he violates the 'yet outstanding and unconstitutional Domestic Violence Order." **Akers responds** that he has **never had any concern, whatsoever**, that he would **knowingly** or **intentionally** violate the "yet outstanding and unconstitutional Domestic Violence Order". His concern with respect

thereto is that he will again be **fraudulently** and/or **maliciously accused** of doing so.

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(J)(i) Irvin argues that: "Given the frivolous nature of Akers' Complaint, a quick disposition of this case is in the public interest." **In response**, Akers herein re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶ 2(I)(i) and hereinafter ¶ 2(J)(iii).

(J)(ii) Irvin argues that: "Crime victims and witnesses in criminal proceedings should not be subjected to further harassment by the likes of Akers, who attempts to collaterally attack his conviction while simultaneously pursuing a frivolous civil rights/ RICO Complaint that obviously violates Federal Civil Rule 11." **In response**, Akers again re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶ 2(I)(i) and hereinafter ¶ 2(J)(iii) and would **totally agree** that "Crime victims and witnesses in criminal proceedings should not be subjected to further harassment..." **insofar as they have been forthright in doing so and not**, in the process, violated virtually **every principle** of Constitutional law, Statutory law, Common law, & law in equity **as well as** virtually every applicable Rule of Court **as these Defendants-Respondents have done**.

(J)(iii) Irvin argues that: "Akers is not an attorney, but he should have known that his case was frivolous based on Judge Wilhoit's dismissal of his prior federal case." **In response**, Akers re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶ 2(C)(ii). Additionally, although not an attorney, Akers certainly understands the meaning of the term "**without prejudice**" and, apparently, Irvin either **does not** or, simply, chooses to ignore it. In either case, that term is defined as follows:

> "**Dismissal without prejudice**. Term meaning dismissal without prejudice to the right of the complainant to sue again on the same cause of action. The effect of the words "without prejudice" is to prevent the decree of dismissal from operating as a bar to a subsequent suit." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998]

(K)(i) Irvin argues that: "In short, consideration of all the previously filed motions to dismiss for lack of jurisdiction or failure to state valid claims will promote judicial economy". **In response**, Akers again herein re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶¶ 2(I)(i) & 2(J)(iii).

(K)(ii) Irvin argues that: "In short, consideration of all the previously filed motions to dismiss for lack of jurisdiction or failure to state valid claims will...promote the underlying policies behind judicial, quasi-judicial, and qualified immunities". **In response**, Akers again herein re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶¶ 2(I)(i) & 2(J)(iii) as well as hereinabove ¶¶ 2(F)(v) - (viii) [page 21 - 22 hereof; & ¶ 2(F)(xi) [page 23 hereof]

(K)(iii) Irvin argues that: "In short, consideration of all the previously filed motions to dismiss for lack of jurisdiction or failure to state valid claims...should soothe Akers' fears as to the parade of horribles he may be subjected to if he physically returns to Kentucky." **Akers responds that** the **very same band - comprised of the very same cast of characters** except for sporadic intermingling of "new recruits" - **has already passed at least three times in the "parade of horribles"** to which Irvin alludes. **The only questions yet remaining are**: in the event Akers be yet again found in attendance - whether it be voluntarily or otherwise - will that same

band parade by a fourth time; who will comprise its cast of characters next; and what ghoulish instruments it will wield next. **There is no manner in which Akers can now be "soothed"** sufficiently to return to the Commonwealth of Kentucky short of commensurate redress - **including removal of Irvin and those Defendants-Respondents who he purports to represent from all positions of authority**.

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(K)(iv) Irvin argues that: "A prompt review of the tendered motions and memoranda and (sic) will expedite the resolution of this action for all concerned". **In response**, Akers again herein re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶ 2(I)(i) [Page 25 hereof].

(K)(v) Irvin argues that: "A prompt review of the tendered motions and memoranda and (sic) will expedite the resolution of this action for all concerned - **especially the innocent victim** of the domestic violence he inflicted, **and all those who gave moral support** to resist Akers' abuse." **In response**, Akers re-states and reiterates his "responses" and/or "objections" contained in hereinabove ¶ 2(C)(ii) [Page 10 hereof]; ¶ 2(D)(i) & (ii) [Page 11 - 14 hereof]; and ¶ 2(J)(ii) [Page 26 hereof].

(L) Irvin further asserts that: "In further support of this motion, movants herein adopt and incorporate by reference as if fully set forth herein their memoranda of law filed in support of their motion to dismiss when the case was filed in the United States District Court for the Middle District of Tennessee." **In response**, Akers hereby incorporates by reference, the same as if fully set forth herein in their entirety, all of his pleadings as filed within United States District Court for the Middle Tennessee District-Nashville Division; United States Court of Appeals- Sixth Circuit; and Supreme Court of the United States.

(M)(i) Irvin then pleads: "WHEREFORE, defendants ...Overstreet, ...Clark, ...Goodwine, ...Red Corn, ...Schwartz, and...Ferguson respectfully request that this Court enter an order dismissing them from this action based on the principles announced by the Supreme Court in *Heck v. Humphry* **[see Akers' response, hereinabove ¶ 2(F)(iii)]** or that these defendants should be dismissed on the *Rooker-Feldman* doctrine **[see Akers' response, hereinabove...**

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...¶ 2(F)(iv)] or *res judicata* **[see Akers' response, hereinabove ¶ 2(F)(i)]**; or that they be dismissed on their respective absolute immunities and prosecutorial immunities from suit, or their qualified immunities from suit; or as barred by the one year statute of limitations." **In response**, Akers hereby re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶¶ 2(F)(iii), 2(F)(iv), 2(F)(i), 2(F)(v), 2(F)(vii), 2(F)(viii), and 2(F)(ix), respectively.

(M)(ii) **Finally, Irvin has the further audacity to plead**: "In order to avoid piecemeal appeals, defendants urge this Court to *sua sponte* dismiss Akers' Complaint against all the remaining defendants [18] based on all the defenses they asserted before when this case was before the U.S. District Court for the Middle District of Tennessee including *res judicata* and the *Heck* doctrine. **Again**, Akers re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶¶ 2(F)(i), and 2(F)(iii), respectively.

CONCLUSION

Quite frankly, Akers has grown extremely weary of responding to the ludicrous pleadings of Kentucky's Assistant Attorney General D. Brent Irvin. His latest hereinabove "MOTION FOR JUDGEMENT ON THE PLEADINGS" is **no less "frivolous"** and/or "**fraudulent**" than all his preceding ones

and has gone **far beyond** **his previous purposes of "confusion and delay"**.

It is obvious that Irvin either: (1) is substantially ignorant of the Constitution and Laws of the United States of America **as well as the** Constitution and Laws of the Commonwealth of Kentucky; (2) possesses a total disdain for the Constitution and Laws of the United States of America **as well as the** Constitution and Laws of the Commonwealth of Kentucky; (3) believes...

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[18] This is **at least the third** instance (in **three separate** Federal Courts) in which Kentucky Asst. Attorney General D. Brent Irvin has attempted to fraudulently usurp representation of other Defendants-Respondents in this civil action. [see EXHIBIT "IIII" & "JJJJ" attached and appended hereto and, thereby, entered into the record herein]

...that he and those Defendants-Respondents he purports to represent are superordinate to the Constitution and Laws of the United States of America **as well as the** Constitution and Laws of the Commonwealth of Kentucky; **or** (4) is just as corrupt as those Defendants-Respondents he purports to represent. It is difficult to imagine any other explanation for his pleadings in this case.

Regardless, the effect of Irvin's herein pleadings have been to hinder, **if not to deprive**, Akers of his rights secured by, ***inter alia***, the First Amendment to the United Stated Constitution.

WHEREFORE, Plaintiff-Petitioner, James G. Akers, **without counsel**, must respectfully ask and pray of this Honorable Court to "**STRIKE**" the hereinabove "MOTION FOR JUDGEMENT ON THE PLEADINGS" and to "**ORDER**" the within case to be held in abeyance pending determination of the issue of proper venue by the United States Supreme Court.

Additionally, Akers must respectfully ask the Court to consider imposition of appropriate sanctions upon Kentucky Assistant Attorney General D. Brent Irvin pursuant to F.R.C.P.11(c) inasmuch as his "MOTION" as filed herein on

April 29, 2002, is: (A) **clearly insufficient on its face** pursuant to F.R.C.P. 8(d), 8(e)(2), & 8(f); (B) **clearly fraudulent** pursuant to F.R.C.P. 9(b)(1), (2), (3), & (4); and (C) **clearly redundant, impertinent, [and] scandalous** pursuant to F.R.C.P. 11(b) & 12(f).

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Petitioner
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

APPENDIX

(Index only included with Petition for Writ of Certiorari)

INDEX OF EXHIBITS

Exhibit	Description:	Page Number: Apndx/Cumul
"IIII"	"NOTICE" by D. Brent Irvin, Assistant Attorney General for the Commonwealth of Kentucky, as served (but not entered) in U. S. District Court for Middle Tennessee District, at Nashville, on 02/02/01	1 / 33
"JJJJ"	"MOTION OF STATE APPELLEES TO DISMISS APPEAL FOR LACK OF JURISDICTION" as served in United States Court of Appeals for the Sixth Circuit, on November 1, 2001	2 / 34

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff-Petitioner, v. CAROLYN P. BISHOP, et al, Defendants-Respondents.**"; (2) I am a **citizen** of the **United States of America** and the **State of Tennessee** therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff- Petitioner James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "**MOTION TO STRIKE; and MOTION TO STAY PROCEEDINGS PENDING DETERMINATION OF 'VENUE' BY UNITED STATES SUPREME COURT**", together with the accompanying "**MEMORANDUM & MEMORANDUM OF LAW**", via "**UNITED STATES MAIL-FIRST CLASS**", upon each and every Defendant-Respondent named therein or their respective legal counsel as follows: [Listing of served Parties and/or their respective Counsel-of-Record omitted. **See official record for listings.**]

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o POST OFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 9th day of May, 2002, has acknowledged the foregoing, and has subscribed her signature thereto in my presence.

s/Lindsey M. Jesperson
NOTARY PUBLIC, Tennessee-at-large
My Commission Expires: 09/25/04

[END OF DOCUMENT]

No. 01-1619

IN THE

Supreme Court of the United States

JAMES G. AKERS,

Petitioner,

v.

CAROLYN P. BISHOP, *et al.*

On Petition For Writ of Certiorari
To The United States District Court For The
Middle Tennessee District-Nashville Division

PETITION FOR WRIT OF CERTIORARI

James G. Akers, *Petitioner*
4708 Trousdale Drive
Nashville, Tennessee 37220
Telephone: 615/834-2843

THE PETITIONER, James G. Akers, without counsel, seeks a writ of certiorari from this Honorable Supreme Court of the United States of America – thereby remanding Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle Tennessee District-Nashville Division, on November 21, 2000 [Case No. 3:00cv1142] back to that Court with instructions that venue shall remain therein, for full adjudication of all matters with respect thereto, for those reasons hereinafter set forth. Alternatively, and in a separate action, Akers will seek a writ of mandamus directing the United States Court of Appeals for the Sixth Circuit to recognize and accept jurisdiction of Akers' appeal docketed in that Court [Case No. 01-6243] on October 16, 2001, pursuant to the "Collateral Order Doctrine" set forth in, e.g., *Armstrong v. McAlpin*, 625 F.2d 433, C.A.N.Y. (1980), citing *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949) in conjunction with TITLE 28 U.S.C. § 1292(a)(1); or a writ of prohibition precluding further hindrance of Akers' prosecution of the herein claims. There remains no other tribunal in which to obtain the relief sought herein.

QUESTIONS PRESENTED FOR REVIEW

(I) Whether venue properly lies with the United States District Court for Middle Tennessee District-Nashville Division;

(II) Whether the "ORDER" transferring venue to Eastern District of Kentucky, at Lexington, is "collateral to the merits" of the case;

(III) Whether transfer of the case to United States District of Kentucky, at Lexington, will result in irreparable damage to Akers;

(IV) Whether the issues respecting transfer of case to the Eastern District of Kentucky, at Lexington, are "too important to be deferred until the whole case is adjudicated"; &

(V) Whether "ends of justice" require venue to remain in United States District Court for the Middle Tennessee District-Nashville Division.

PARTIES TO THE PROCEEDING

PLAINTIFF-PETITIONER:

(a) James G. Akers, *pro se*
Post Office Box 3648
Brentwood, Tennessee 37024-3648
Telephone: (615)834-2843

DEFENDANTS-RESPONDENTS:

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(b) Doris Fleming;
Counsel-of-record: David B. Scott, Esquire
Ortale, Kelley, Herbert & Crawford
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(c) Allen I. Rushing; (i) John J. Vaughan, M.D.;
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Telephone: (859)252-9000

(d) CBT Does 1 through 40 [known only as that group of "persons" at Central Bank & Trust Company, Inc., Lexington, Kentucky, and yet unidentified];

(e) Todd M. Layne; (f) Donald Shannon;
Counsel-of-record: Robert L. Estes, Esquire
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Telephone: (615)244-6538

(g) Jerry L. Kelly;
Counsel-of-record: Augustus S. Herbert, Esquire
Middleton Reutlinger
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Louisville, Kentucky 40202
Telephone: (502)584-1135

(h) SCC Does 1 through 50 [known only as that group of "persons" at Southland Christian Church of Lexington, Inc., Nicholasville, Kentucky, and as of yet unidentified pursuant to discovery herein];

(j) Thomas L. Clark;
(o) Lou A. Red Corn;
(r) Rebecca M.. Overstreet;
(s) Cindy G. Schwartz;
(u) Todd D. Ferguson;
(w) Pamela R. Goodwine;
Counsel-of-record: D. Brent Irvin, Asst. Atty. Gen.[1]
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(k) Katherine H. Witt;
Counsel-of-record: Bennett E. Bayer, Esquire
Landrum & Shouse
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(l) FCS Does 1 through 30 [known only as that group of "persons" at the Office of the Fayette County (Kentucky) Sheriff, Lexington, Kentucky, and, as yet, unidentified pursuant to discovery herein];

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[1] The Commonwealth of Kentucky **has not been named as a party hereto.**

(m) Pamela Miller;
(n) FCS Does 1 through 60;
Counsel-of-record: Theresa L. Holmes, Dir. of Litig.[2]
Lexington-Fayette Urban Co. Govt.
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Lexington, Kentucky 40507
Telephone: (859)258-3500

(p) CAO Does 1 through 20 [known only as that group of "persons" at the Commonwealth's Attorney's Office for Kentucky's Twenty-second Judicial District, Lexington, Kentucky, yet unidentified];

(p) FCC Does 1 through 10 [known only as a group of individual "persons" at the Office of the Fayette (Kentucky) Circuit Court Clerk, Lexington, Kentucky, and as of yet unidentified];

(t) Earnest W. Williams;
Counsel-of-record: Darrell G. Townsend, Esquire
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Middle Tennessee District-Nashville Division; &
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United States Court of Appeals-Sixth Circuit
524 Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202-3988
Telephone: (513)564-7000

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[2] The L.F.U.C.G. has not yet been named as a party to this action but will be added by "Amended Complaint" as the result of its voluntary entry herein.

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[1] Title 42 U.S.C. § 1988(a) is quoted within "ARGUMENT I", page 22 hereof. All remaining "CONSTITUTIONAL PROVISIONS & STATUTES" cited are quoted in Akers' Memorandum ["EXHIBIT USSC-11" hereto, at pages 5-19].

INTRODUCTION

On November 21, 2000, the Plaintiff-Appellant, James G. Akers (hereinafter "Akers"), without counsel, and in strict accordance with Title 28 U.S.C. § 1654, filed his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)", [D.E. #1] together with Akers' extensive and contemporaneous "MEMORANDUM & MEMORANDUM OF LAW" ["EXHIBIT USSC-11" hereto] and contemporaneously-filed "APPENDIX/RELEVANT EXHIBITS" (hereinafter "Akers Complaint"; "Akers' Memorandum"; & "Akers' Appendix", respectively) in the United States District Court for the Middle Tennessee District-Nashville Division. Jurisdiction was asserted pursuant to provisions of the Federal Statutes themselves; and venue was asserted on the basis that "the prevailing acts" as alleged in Akers' Complaint had taken place within the Federal District of Middle Tennessee District-Nashville Division. "Diversity of citizenship" of the parties, at most, a secondary consideration.

The factual allegations within Akers' Complaint, when coupled with applicable Constitutional, Statutory, and Common Laws of the United States of America and those "authorities" in support thereof as cited in Akers' Memorandum, will speak for themselves. **Not even a single Defendant has attempted to controvert even a single averment** and, in fact, **they can not do so without placing themselves in peril of yet further sanctions and/or penalties under Federal Law**. The "merits" of Akers' herein case are not even arguable.

On September 18, 2001, the Honorable Robert L. Echols, Chief Judge for United States District for the Middle Tennessee District-Nashville Division, entered his "ORDER" denying the Defendants'-Respondents various "MOTION[S] TO DISMISS" but granting transfer of the case to United States District Court for the Eastern District of Kentucky, at Lexington ["EXHIBIT USSC-09" hereto].[2]

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[2] See hereunto relevant excerpts therefrom quoted within Akers' hereinafter "ARGUMENT(S) I through V" & "CONCLUSION", pages 21-30 hereof.

It is apparent that the District Court either: (1) did not read Akers' pleadings in that Court; (2) did not understand Akers' pleadings in that Court; (3) did not afford due credibility to Akers' pleadings in that Court; (4) accepted the Defendants'-Respondents' fraudulent renditions of the facts with respect thereto; and/or (5) based Its ruling on a combination of "all the above".

This "Petition for Writ of Certiorari" follows the Sixth Circuit Court of Appeals' denial of Akers' appeal pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with the "Collateral Order Doctrine" as set out in, e.g., **Cohen v. Beneficial Loan Corp.**, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949), in which the United States Supreme Court held that "...certain orders were immediately appealable (1) if they were collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until whole case is adjudicated."[3]

JURISDICTION (U. S. DISTRICT COURT)

United States District for the Middle Tennessee District-Nashville Division, had both jurisdiction and venue pursuant to the provisions of TITLE 18 U.S.C. § 1964(c); TITLE 18 U.S.C. § 1965(b); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3).

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[3] See also: **Clemence v. Clemence**, 8 Kan.App.2d 377, 658 P.2d 368 (1983), i.e., "'Collateral order' doctrine allows appeal from interlocutory order which conclusively determines issue completely separate from merits of action, and which cannot be given effective review on appeal from subsequent final judgement; such order is, for purposes of appellate jurisdiction, 'final order'" (emphasis added); **Firestone Tire & Rubber Co. v. Risjord**, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981), i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, the order...is appealable under § 1291 only if it falls within the *Cohen* doctrine." (emphasis added); **Abney v. United States**, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977) at FN4, i.e., "Of course, Cohen's collateral-order exception is equally applicable in both civil and criminal proceedings." (emphasis added)

JURISDICTION (U. S. COURT OF APPEALS)

The United States Court of Appeals for the Sixth Circuit had jurisdiction to hear and adjudicate Akers' therein appeal, and to consider all matters with respect thereto, pursuant to the "Collateral Order Doctrine" as set forth in, e.g., ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980), citing *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949) in conjunction with TITLE 28 U.S.C. § 1292(a)(1), but disclaimed Its jurisdiction pursuant to the legal theorems set out in ***SongByrd v. Estate of Grossman***, 253 F.2d 680, 683 (2nd Cir.), *cert. denied* 531 U.S. 824 (2000); ***Lemon v. Druffel***, 253 F.2d 680, 683 (6th Cir. 1958); ***F.D.I.C. v. McGlamery***, 74 F.3d 218, 222 (10th Cir. 1996); & ***Middlebrooks v. Smith***, 735 F.2d 431, 432 (11th Cir. 1984), on January 24, 2002 ["EXHIBIT USSC-06"].

JURISDICTION (U. S. SUPREME COURT)

The civil case from which the within "Petition for Writ of Certiorari" arises involves violations of Federal Law – some of which originated in Kentucky resulting in violations within Tennessee and, conversely, some originating in Tennessee and resulting in violations within Kentucky. Neither the State or Federal Courts within the states of Tennessee or Kentucky have both personal jurisdiction over all the parties and subject matter jurisdiction over all the issues.

Therefore, the Federal Courts have exclusive jurisdiction to hear and adjudicate this case pursuant to provisions of TITLE 18 U.S.C. § 1964(c), TITLE 18 U.S.C. § 1965(b), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3); and this Honorable Supreme Court of the United States of America has exclusive jurisdiction to hear and adjudicate the within "Petition for Writ of Certiorari", and consider all matters with respect thereto, pursuant to ARTICLE III-§ 2 of the United States Constitution inasmuch as the U. S. Court of Appeals for the Sixth Circuit has already disclaimed jurisdiction in Its "OPINION" and "ORDER" entered January 24, 2002 [*id.*]. There is no other tribunal in which to obtain the relief requested herein.

STATEMENT OF THE CASE *SUB JUDICE*

The following are edited excerpts [4] from Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [Case No. 3:00-1142] as filed on November 21, 2000, in United States District Court for the Middle Tennessee District-Nashville Division.

COUNT ONE - CONSPIRACY

In about mid-July, 1993, in Fayette County, Kentucky, Defendants Pamela Miller, Katherine Witt, and LFG Does 1 thru 50 (known only as that group of individual "persons" and/or "public officials" within the Lexington-Fayette Urban County Government, "associated-in-fact") jointly devised, implemented, and effectuated a "conspiracy" in violation of TITLE 42 U.S.C. § 1985(2) & (3), *inter alia*, to unlawfully deprive that "class of persons" which included Plaintiff Akers of rights, privileges, and/or immunities secured by, *inter alia*, the Fourth, Fifth, & Fourteenth Amendments to the United States Constitution in that manner set forth in...¶¶E-12 and corresponding FN41 thereto of Akers' Memorandum; and which said "conspiracy" ultimately resulted in a "chain conspiracy" in furtherance thereof as detailed in hereinafter "COUNTS TWO, THREE, FOUR, TWELVE, & TWENTY-TWO"; and which "chain conspiracy" ultimately resulted in commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and which "conspiracy", "chain conspiracies", "overt acts", and "unlawful imprisonment" ultimately resulted in injuries to Akers in his person and property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT TWO - CHAIN CONSPIRACY

At some time shortly following August 25, 1993, in Fayette County, Kentucky, herein Defendants Bishop, Fleming,

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[4] **Edited for clerical errors only** and for format required by U.S .S.Ct. Rule 33.

Rushing, and CBT Does 1 thru 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., and herein "associated-in-fact"), jointly devised a "chain conspiracy" in violation of TITLE 18 U.S.C. § 1985(2) & (3), *inter alia*, in the furtherance of that "conspiracy" detailed in hereinabove "Count One", to unlawfully and/or unconstitutionally deprive Plaintiff Akers of his rights, privileges, and/or immunities secured by, *inter alia*, Article 1-Section 10 [Cl.1], & Article IV-Section 2 [Cl.1] of the United States Constitution in conjunction with the Fourth, Fifth, & Fourteenth Amendments thereto, in that manner as set forth in...¶¶E-12, E-13, E-14(d), E-16, E-17, E-23 through E-27, E-29, E-31 through E-36, E-38 through E-41, E-43, E-44, E-47, E-48, E-50(e), & E-50(f) with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and injuries to Akers in his person and property as are detailed in hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN".

COUNT THREE - CHAIN CONSPIRACY

On, or about, April 8, 1994, in Fayette County and/or Jessamine County, Kentucky, Defendants Layne and Shannon joined in the furtherance of that "chain conspiracy" as detailed in hereinabove "COUNT TWO" by committing specific "overt acts" in the furtherance thereof and in that manner set forth in...¶¶E-24 through E-27, E-29, E-31(a), E-31(b), E-31(c), E-34, E-38, E-40, E-43, E-44, & E-50(e) together and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in the commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN", respectively; the "unlawful imprisonment" of Akers as detailed in "COUNTS ELEVEN & FOURTEEN" hereof; and injuries to Akers in his person, property, and businesses as detailed within hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereof, respectively.

COUNT FOUR - CHAIN CONSPIRACY

On, or about, June 16, 1994, in Fayette County, Kentucky, and/or Jessamine County, Kentucky, the Defendants Vaughan, Kelly, and SCC Does 1 through 50 (known only as that group of individual "persons" at the Southland Church of Lexington, Inc., and "associated-in-fact") joined in the furtherance of that "chain conspiracy" as outlined in hereinabove "COUNTS TWO & THREE" by committing specific acts in furtherance thereof in that manner as set forth in...¶¶E-41, E-42, E-46, E-48, & E-50 together with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in the commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" of Akers as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN".

COUNT FIVE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, October 28, 1994, in Fayette County and/or Jessamine County, Kentucky, the Defendants Bishop, Fleming, Rushing, CBT Does 1 through 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., "associated-in-fact"), Layne, Shannon, Kelly, SCC Does 1 through 50 (known only as that group of "persons" at Southland Christian Church of Lexington, Inc., and "associated-in-fact"), collectively and in concert each with another, with a common scheme and purpose, devised, implemented, and effectuated an intentional course of conduct in furtherance of hereinabove "COUNTS TWO through FOUR", with the intent to deprive Plaintiff Akers of his rights, privileges, and immunities secured by, *inter alia*, Article I-Section 9 [Cl. 1], Article IV-Section 2 [Cl. 1], of the United States Constitution and the Fourth, Fifth, & Fourteenth Amendments thereto and, in addition thereto, *inter alia*, Article 1, Sections 3, 8, & 14 of the Constitution of Tennessee, by committing specific "overt acts" in furtherance thereof and in the manner as set forth in...¶¶E-51, E-54, E-56 through E-58, & E-61 through E-68 and all

footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in the "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and those injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT SIX - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, March 21, 1995, in Fayette County and/or Jessamine County, Kentucky, the Defendants Witt and FCS Does 1 through 30 (known only as a group of "persons" at the Fayette County Sheriff's office and "associated-in-fact") joined in the furtherance of that "collective and concerted common scheme and purpose" and/or "chain conspiracy" as outlined in hereinabove "COUNT FOUR" by committing specific "overt acts" in furtherance thereof in that manner set forth in...¶¶E-61, E-63, E-77, & E-79 and all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in "unlawful imprisonment" of Akers as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN" and injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT SEVEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, March 21, 1995, in Fayette County and/or Jessamine County, Kentucky, the Defendants Clark, LFG Does 1 through 60 (known only as that group of "persons" at the Lexington-Fayette Urban County Government, "associated-in-fact"), and CAO Does 1 through 20 (known only as that group of "persons" at the Office of the Commonwealth's Attorney for the Twenty-second Judicial District of Kentucky, "associated-in-fact") joined in the furtherance of that "collective and concerted common scheme and purpose" and/or "chain conspiracy" as outlined in "COUNTS FOUR through SIX" hereinabove by committing specific "overt acts" in furtherance thereof in that manner set forth in...¶¶E-61, E-63, E-77, & E-79 together with all footnotes thereto, respectively, of Akers' Memorandum; and

which said "overt acts" ultimately resulted in the "unlawful imprisonment" of Akers as detailed in "COUNTS ELEVEN & FOURTEEN" hereof and injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT EIGHT - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, November 1, 1995, in Fayette County, Kentucky, Defendant Red Corn joined in the "chain conspiracy" as detailed in hereinabove "COUNTS ONE through FOUR" and the aforesaid "collective and concerted common scheme and purpose" as detailed in hereinabove "COUNTS FIVE, SIX, and SEVEN" by committing specific "overt acts" in the furtherance thereof in that manner set forth in...¶¶E-82, E-83, E-84, E-85, E-86.I through E-86.X, E-89, E-90(a), E-90(b), E-90(d), E-92, E-94, & E-96 together with all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in "unlawful imprisonment" of Akers as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN" and injuries to Akers in his person and property as detailed in "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereof.

COUNT NINE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, November 1, 1995, in Fayette County, Kentucky, the herein Defendant Overstreet joined in that "chain conspiracy" as detailed in hereinabove "COUNTS ONE through FOUR" and that "collective and concerted common scheme and purpose" as detailed in hereinabove "COUNTS FIVE through EIGHT" by committing specific "overt acts" in the furtherance thereof in that manner set forth in...¶¶E-81, E-82, E-84, E-86.I through E-86.X, E-87, & E-88 and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in the "unlawful imprisonment" of Akers as detailed in "COUNTS ELEVEN & FOURTEEN" hereinafter and injuries to Akers in his person and property as detailed in "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereinafter.

COUNT TEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, March 5, 1997, in Franklin and/or Fayette County, Kentucky, Defendant Schwartz joined in that "chain conspiracy" as detailed in hereinabove "COUNTS ONE through FOUR" and "collective and concerted common scheme and purpose" detailed in hereinabove "COUNTS through EIGHT" by committing specific "overt acts" in the furtherance of those "conspiracies" and "overt acts" in furtherance thereof in that manner set forth in...¶¶E-91 & E-93 and all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" further contributed to the "unlawful imprisonment" of Akers and injuries to Akers in his person and in his property as detailed in "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereinafter.

COUNT ELEVEN - UNLAWFUL IMPRISONMENT

As the proximate result of those "conspiracies" and "chain conspiracies" detailed in hereinabove "COUNTS ONE through FOUR", and those "overt acts" in furtherance thereof as detailed in hereinabove "COUNTS FIVE through TEN", Akers was unlawfully imprisoned an aggregate of SEVEN HUNDRED TWENTY-EIGHT (728) DAYS in custody of the Fayette County [Kentucky] Sheriff, Davidson County [Tennessee] Sheriff, and Kentucky Department of Corrections, respectively, and thereby injured in his person and in his property in that manner detailed in...¶¶122(b), 125, & 126 of Akers Memorandum, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, *inter alia*.

COUNT TWELVE - CHAIN CONSPIRACY/COVER-UP

Beginning on, or about, February 27, 1998, and, then, continuing through July 7, 2000, in Fayette County, Jessamine County, and/or Franklin County, Kentucky, Defendants Bishop, Fleming, CBT Does 1 through 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., "associated-in-fact"), Layne, Shannon, SCC Does 1 through 50 (known only as a group of "persons" at Southland Church of Lexington, Inc., and "associated-in-fact"), Vaughan, Red Corn, Overstreet, & Ferguson engaged in an intentional and continuing course of

conduct in the furtherance of those "conspiracies" and/or "chain conspiracies" as detailed hereinabove "COUNTS ONE through FOUR", and those "overt acts" in furtherance thereof as detailed in hereinabove "COUNTS FIVE through TEN", by committing additional "overt acts" in furtherance and covert concealment thereof as detailed in...¶¶E-97, E-98, E-99, E-103, E-104, E-106, E-107, E-108, E-110.I through E-110.X, E-111 through E-117, E-119, & E-121 and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which such "overt acts" resulted in the further "unlawful imprisonment" of Akers as detailed in hereinabove "COUNT FOURTEEN" and those further injuries to Akers in his person and his property detailed in hereinafter "COUNTS TWENTY-FIVE & TWENTY-SIX", all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, *inter alia*.

COUNT THIRTEEN - FURTHER OVERTACTS/COVER-UP

At some time after October 28, [1998], in Fayette County, Kentucky, FCC Does 1 through 10 (known only as a group of "persons" at the Office of the Fayette [Kentucky] County Court Clerk, and "associated- in-fact") joined in that "further chain conspiracy" as detailed in hereinabove 'COUNT TWELVE' by engaging in an intentional and continuing course of conduct in furtherance thereof by committing additional "overt acts" in the furtherance and covert concealment thereof by fraudulently redacting that portion of the "official state court record" as detailed in...¶¶E-110.V(k) of Akers Memorandum, thereby contributing to "unlawful imprisonment" of Akers as detailed in hereinabove "COUNT FOURTEEN" and further injuries to Akers in his person and property as detailed in hereinafter 'COUNTS TWENTY-FIVE & TWENTY-SIX', in violation of TITLE 18 U.S.C. §§ 1983 & 1985, *inter alia*.

COUNT FOURTEEN - UNLAWFUL MPRISONMENT

As the proximate result of those "conspiracies" & "chain conspiracies" detailed in hereinabove "COUNTS ONE through FOUR"; and "overt acts" in the furtherance thereof as detailed in hereinabove "COUNTS FIVE, SIX, SEVEN, EIGHT, TEN, & TWELVE", Akers was again "unlawfully imprisoned" in an aggregate of SIX HUNDRED SEVEN (607) DAYS in custody of

the Fayette County [Kentucky] Sheriff and, subsequently, the Kentucky Department of Corrections, and thereby still further injured in his person and his property in that manner as detailed in ¶¶122(b), 125, & 126 of Akers' Memorandum, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, *inter alia*.

COUNT FIFTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of "persons" at the Southland Christian Church of Lexington, Inc., "associated-in-fact"), collectively and in concert each with another, with common scheme and purpose, devised, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in subparagraphs (a) through (d) hereinafter; and used income derived therefrom to acquire, maintain interests in, and/or participate in the conduct of the affairs of the "enterprises" known as Southland Christian Church of Lexington, Inc., and "Association-in-fact" (comprised of all the hereinabove "persons" named as "Defendants" herein, both jointly and severally, and "associated-in-fact") through a "pattern of racketeering activity"; the "activities" of which said "enterprises" having and maintaining affects on both "interstate commerce" and "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific said "predicate acts" are as follows:

> (a) On or about May 12, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of "persons" at Southland Christian Church of Lexington, Inc., and herein "associated-in-fact"), collectively and in concert each with another, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the commission of "kidnaping" (in violation of Title 18 U.S.C. § 1201 and K.R.S. 508.130) in preparation for the hereinafter predicate acts depicted "COUNT FIFTEEN(b) & (c)" in that manner as set forth in...¶¶E-31, E-32, E-34, & E-38 together with all corresponding footnotes thereto,

respectively, of Akers' Memorandum; and which such "predicate act" ultimately resulted in injuries to Akers in his businesses and property as detailed in...¶¶125 & 127 of Akers' Memorandum;

(b) From about May 12, 1994 until June 29, 1994, in both Fayette County, Kentucky, Jessamine County, Kentucky, and/or Centre City, Minnesota, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of persons at the Southland Christian Church of Lexington, Inc., herein "associated-in-fact"), acting collectively and in concert one with the other, in covert preparation for that further predicate act depicted as hereinafter "COUNT FIFTEEN(c)", and with common scheme and purpose, devised, implemented, effectuated, or otherwise participated in, the predicate act of "unlawful imprisonment" of Akers (in violation of K.R.S. 509.020 and, therefore, as well in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner detailed in...¶¶E-31, E-32, E-34, & E-38 with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which "predicate act" ultimately resulted in injuries to Akers in his person, businesses, and property further detailed in...¶¶125 & 127 of Akers' Memorandum;

(c) On, or about, June 28, 1994, in Fayette and/or Jessamine County, Kentucky, the Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of "persons" at the Southland Christian Church of Lexington, Inc., "associated-in-fact"), acting collectively and in concert each with another, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the additional predicate act of "theft by unlawful taking or disposition" of certain property of Akers and Coleman/Akers & Akers, Inc. (C/AA) valued in excess of $300.00 (in violation of K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner as is set forth in...¶E-43 together with FN55 & FN56 thereto, respectively, of Akers' Memorandum; and which said "predicate act" ultimately resulted in injuries to Akers in his businesses

and property as are detailed in...¶¶125 & 127 of Akers' Memorandum; &

(d) On or about June 28, 1994, in Fayette County, Kentucky, and Jessamine County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of "persons" at Southland Christian Church of Lexington, Inc., and "associated-in-fact"), acting collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or participated in, the further predicate act of "tampering with physical evidence" (in violation of Title 18 U.S.C. § 1512 & K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner set forth in...¶E-43 together with corresponding FN55 & FN56, respectively, of Akers' Memorandum; and which "predicate act" ultimately resulted in those injuries to Akers in his person, property, and businesses as detailed in...¶¶125 & 127 of Akers' Memorandum.

COUNT SIXTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, and Vaughan, acting collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or participated in and, thereby, committed those two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in subparagraph (a) hereinafter; used income derived therefrom to acquire and/or maintain interests in and/or participate in conduct of the affairs of the "enterprises" known as "Dr. John J. Vaughan, M. D.", and the "Association-in-fact" (comprised of all those hereinabove "persons" named as "Defendants" herein, both jointly and severally, corporately and individually, and "associated-in-fact") through such a "pattern" of "racketeering activity"; and the "activities" of those said "enterprises" having maintained affects on both "interstate commerce" and "foreign commerce" at all times relevant hereto, all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) Beginning on, or about, June 16, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and Vaughan, proceeding in concert each with the other, with common scheme and purpose, devised, effectuated, implemented, or otherwise participated in, commission of the predicate acts of "wire fraud" (in violation of Title 18 U.S.C. § 1341) and "mail fraud" (in violation of Title 18 U.S.C. § 1343) in that manner as set forth in...¶¶E-2, E-8, E-28, E-35, E-36, E-41, E-42, E-48, & E-48 together with all corresponding footnotes thereto, respectively, of Memorandum; and which such "predicate acts" resulted in injuries to Akers' businesses and property as detailed in...¶¶125 & 127 of Akers' Memorandum.

COUNT SEVENTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, and Kelly, collectively and in concert each with the other, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in hereinafter subparagraph (a); in attempt to derive funds therefrom for use in acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known as the "Association-in-fact" (comprised of all hereinabove "persons" named as "Defendants" herein, both jointly and severally, both corporately and individually, and "associated-in-fact") through such a "pattern" of "racketeering activity"; the "activities" of which said "enterprises" having had and maintained affects on "interstate and foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) On, or about, September 23, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and/or Kelly, collectively and in concert each with another, with common scheme and purpose, devised, effectuated, or otherwise participated in the commission of "forgery in the second degree" (in violation of K.R.S. 516.030), and

"theft by extortion" (in violation of K.R.S. 514.040), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶¶E-50 together with FN62 of Akers' Memorandum; and which said "predicate acts" resulted in injuries to Akers' businesses and property as detailed in...¶¶125 & 127 Akers' Memorandum.

COUNT EIGHTEEN - R.I.C.O. VIOLATIONS

In the course thereof the hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop & Rushing, acting in concert each with another, with a common scheme and purpose, devised and/or effectuated and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in subparagraph (a) hereinafter, in an overt attempt to use income derived therefrom in the acquisition of, maintaining interests in, and/or otherwise participating in conduct of the affairs of the "enterprise" known only as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, jointly and severally, and "associated-in-fact") through a "pattern" of "racketeering activity"; the "activities" of which said "enterprise" both having and maintaining affects on "interstate commerce" and "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) Beginning on, or about, October 23, 1994, via interstate telephonic communications between Fayette County, Kentucky, and Williamson County, Tennessee, Defendants Bishop and Rushing, acting in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in commission of the two and distinctly separate "predicate acts" of "blackmail" (in violation of Title 18 U.S.C. § 873); and "extortion" (in violation of Title 18 U.S.C. § 875), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶E-56 and FN67 of Akers' Memorandum; and which "predicate acts" resulted in injuries to Akers' businesses and property as detailed in ...¶¶125 & 127 of Akers' Memorandum.

COUNT NINETEEN - R.I.C.O. VIOLATIONS

In the course thereof the hereinabove "COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN through EIGHTEEN', the Defendant Red Corn joined in those "chain conspiracies", "conspiracies', and "overt acts" in the furtherance and concealment thereof, on, or about, November 1, 1995, in Fayette County, Kentucky and/or Jessamine County, Kentucky; and acting both independently and in concert with those other Defendants named herein, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in hereinafter subparagraph (a) through (d); having derived funds therefrom and attempting to derive additional funds therefrom for her use in the acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known herein only as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, both jointly and severally, as herein "associated-in-fact") through such a "pattern" of "racketeering activity"; and the "activities" of which having affects on "interstate and/or foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

> (a) On, or about, November 6, 1995, in Fayette County, Kentucky, Defendant Red Corn collaborated with, unlawfully assisted, influenced, and/or directed Defendant Bishop in fraudulent testimony before the Fayette County [Kentucky] Grand Jury and, therefore, acted in concert with Bishop, with a common scheme and purpose, in effectuating and/or participating in commission of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶¶E-81 & E-82 with FN81 & FN82 thereto, respectively, of Akers' Memorandum; and which "predicate acts" ultimately

resulted in injuries to Akers in his businesses and in his as detailed in...¶¶ 125 & 127 of Akers' Memorandum;

(b) In about mid-May, 1995, in Fayette County, Kentucky, via telephonic communications to Pulaski County, Kentucky, the Defendant Red Corn committed the "predicate act" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512), thereby violating provisions of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner as set forth in...¶E-86.I(a) and FN85 thereto of Akers' Memorandum; and which said "predicate act" further resulted in injuries to Akers in his businesses and property as detailed in...¶127 of Akers' Memorandum;

(c) On May 20 through May 22, 1995, in Fayette County, Kentucky, the Defendant Red Corn committed numerous of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in...¶¶E-86.II through E-86.VIII and FN86 thru FN93, respectively, of Akers' Memorandum; and which additional "predicate acts" resulted in further injuries to Akers' businesses and property detailed in...¶127 of Akers' Memorandum; &

(d) On October 26 through 28, 1998, in Fayette County, Kentucky, the Defendant Red Corn committed numerous of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in the manners set forth in...¶¶E-110.III through E-110.VII, E-110.IX, & E-110.X together with N106 through FN126 thereto, respectively, of Akers' Memorandum; and which such additional "predicate acts" resulted in injuries to Akers' businesses and his property as detailed in...¶127 of Akers' Memorandum.

COUNT TWENTY - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove 'COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN through

EIGHTEEN', the Defendant Overstreet joined in those "chain conspiracies', "conspiracies", and "overt acts" in the furtherance and concealment thereof on, or about, November 10, 1995, in Fayette County and/or Jessamine County, Kentucky, and acting both independently and in concert/consortium with those other Defendants named herein, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity", as are enumerated in hereinafter subparagraphs (a) & (b); and, having derived funds therefrom in covert attempt to derive additional funds therefrom for her use in the acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, both jointly and severally, and herein "associated-in-fact") through such a "pattern" of "racketeering activity"; the "activities" of which "enterprise" maintaining affects on "interstate commerce" and/or "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

> (a) On May 20 through May 22, 1995, in Fayette County, Kentucky, the Defendant Overstreet committed two or more of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in...¶¶E-86.II through E-86.VIII with FN86 thru FN93, respectively, of Akers' Memorandum; and which additional "predicate acts" resulted in further injuries to Akers' businesses and property as detailed in...¶127 of Akers' Memorandum; &
>
> (b) On October 26 through 28, 1998, in Fayette County, Kentucky, the Defendant Overstreet committed two or more "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C.

§§ 1961 & 1962, in the manners set forth in...¶¶E-110.III thru E-110.VII, E-110.IX, & E-110.X together with FN106 through FN126, respectively, of Akers' Memorandum; and which additional "predicate acts" resulted in further injuries to Akers' businesses and/or property as detailed in...¶127of Akers' Memorandum.

COUNT TWENTY-ONE - R.I.C.O. VIOLATIONS

On, or about, September 2, 1998, in Fayette County, Kentucky, and/or Williamson County, Tennessee, and/or via telephonic communications there between, Defendants Red Corn, Overstreet, and Williams, acting both independently and in consortium each with another, engaged in an intentional course of conduct directed at Akers, with common scheme and/or purpose, participated in and, thereby, committed two or more of the "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in hereinafter subparagraph (a) through (c); having derived funds therefrom, and attempting to derive additional funds therefrom, for use in the acquisition of and/or maintaining interests in, or otherwise participating in conduct of the affairs of the "enterprises" known as "Ernest W. Williams, Attorney-at-law" and the "Association-in-fact" (comprised of all those hereinabove "persons" named as Defendants herein, both jointly and severally, "associated-in-fact") through a "pattern" of such "racketeering activity"; the "activities" of each of the such "enterprises" having and maintaining affects on "interstate and/or foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and each such "predicate act" depicted as "COUNT TWENTY-ONE(a), (b), & (c)" hereof being violations of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated hereinafter as follows:

(a) "Blackmail" (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 873, *inter alia*, and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in...¶¶E-106 & E-107 and FN106 thereto of Akers' Memorandum ; and which "predicate act" further enhanced injuries to Akers in his businesses and property as detailed in...¶127 of Akers' Memorandum;

(b) "Extortion" (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 875, *inter alia*, and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in...¶¶E-106 & E-107 together with FN106 thereto of Akers' Memorandum; and which "predicate act" further enhanced injuries to Akers' businesses and property as detailed in...¶127 of Akers' Memorandum; &

(c) "Civil rights intimidation" (in violation of Tennessee Code Annotated 39-17-309 and, therefore, in violation of TITLE 18 U.S.C. §§ 1961 & 1962) in that manner as set forth in...¶¶E-106 & E-107 together with corresponding FN106 of Akers' Memorandum; and which such "predicate act" further enhanced injuries to Akers' businesses and property as detailed in...¶127 of Akers' Memorandum.

COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP

On, or about, March 30, 2000, in Fayette County, Kentucky, the Defendants Bishop, Fleming, Layne, and Witt continued in those "conspiracies" and "chain conspiracies" as detailed in hereinabove "COUNTS TWO, THREE, & FOUR"; and "overt acts" in the furtherance and concealment thereof as detailed in "COUNTS FIVE, SIX through TEN, & THIRTEEN"; and in the concealment of those "R.I.C.O. Violations" as detailed in hereinabove "COUNTS FIFTEEN through TWENTY-ONE", by conspiring to, participating in, and/or otherwise effectuating schemes to further deprive Akers of privileges and immunities secured by, *inter alia*, Article I-Section 9 [Cl. 2], Article I-Section 10 [Cl. 1], Article IV-Section 2 [Cl. 1], and the First, Fourth, Fifth, Sixth, & Fourteenth Amendments of/to the Constitution of the United States of America and Article 1, Sections 8 & 10 of the Constitution of Tennessee; were joined in that "conspiracy" and "final overt acts" in furtherance thereof by Defendant Goodwine on April 13, 2000, in that manner set forth in...¶E-118 together with FN133 thereto, respectively, of Akers' Memorandum; and which "final overt acts" further enhanced injuries to Akers in his person, property, and businesses as detailed in...¶127 of Akers' Memorandum; all in violation of Title 42 U.S.C. §§ 1983 and 1985(3), *inter alia*.

COUNT TWENTY-THREE - FINAL COVER-UP

On, or about, May 19, 2000, in Fayette County, Kentucky, the Defendants Bishop, Red Corn, and Overstreet, *inter alia*, conspired to covertly "conceal" those "conspiracies" and "chain conspiracies" as detailed in hereinabove "COUNTS ONE, TWO, THREE, & FOUR"; "overt acts" in the furtherance thereof as detailed in "COUNTS FIVE, SIX through TEN, & THIRTEEN"; "unlawful imprisonment" of Akers as detailed in hereinabove "COUNTS ELEVEN & FOURTEEN"; and "R.I.C.O. Violations" detailed in hereinabove "COUNTS FIFTEEN through TWENTY-ONE", in that manner as detailed in...¶¶E-121 through E-124 with FN135 & FN136, respectively, of Akers' Memorandum; and which additional "overt acts" further enhanced the injuries to Akers in his person, property, and businesses as detailed in... ¶126 & 127 of Akers' Memorandum; all in violation of Title 42 U.S.C. §§ 1983 and 1985(3). [D.E. #1, pages 96 - 123]

In view of the foregoing, it is incomprehensible that the U.S. District Court for the Middle Tennessee District could have concluded in Its "MEMORANDUM", as entered September 18, 2001 ["EXHIBIT USSC-09" hereto], that Akers could receive a fair adjudication of this case in any Court in the Commonwealth of Kentucky or that the "ends of justice" require Akers to ever return to any jurisdiction in the Commonwealth of Kentucky – thereby placing himself in peril of "more of the same" tyranny and oppression of/by the herein Defendants-Respondents in violation of the Constitution and Laws of the United States.

ARGUMENT(S)

ARGUMENT I: VENUE PROPERLY LIES WITH THE UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE DISTRICT, AT NASHVILLE

The District Court asserts that:

"...the only events alleged to have occurred in [the U. S. District of Middle Tennessee] are some telephone calls to and from [Akers] and his former wife, Defendant

> Carolyn Bishop, in Lexington, Kentucky, which may have violated a protective order and formed the basis for contempt charges, and [Akers] extradition in October 1995 from Tennessee to Kentucky after his arrest. All other events alleged in the Complaint occurred in the Eastern District of Kentucky, including the events that led to his arrests, his trial in state court, sentence, and incarceration. Therefore, based upon the record before the Court, the Court concludes that 'a substantial part of the events or omissions giving rise to the claim[s] occurred' in the Eastern District of Kentucky. Only a few tangential acts/events are alleged to have occurred in the Middle District of Tennessee. Consequently, the Court finds that venue does not lie in [U. S. District of Middle Tennessee] under 28 U.S.C. § 1391(b)(2)." [*id.*, page 3, lines 2 - 17, clarification added]

Obviously, the District Court has misconstrued the facts - perhaps in the same manner as did the Hon. Henry R. Wilhoit, Chief Judge of the United States District Court for the Eastern District of Kentucky - due to acceptance of the Defendants'-Respondents' fraudulent misrepresentations [e.g., "EXHIBIT USSC-10"hereto at FN6, page 8 thereof]

At the time Akers migrated back to Tennessee on September 23, 1994, **there were no charges whatsoever against him within Kentucky or <u>elsewhere</u>**. ["EXHIBIT USSC-02", D.E. #3, EXHIBIT "V" thereof] and none could have reasorably been anticipated. **<u>All of the subsequent "criminal charges'</u> were the <u>proximate result</u> of interstate "events"**, the effect of which was extortion, blackmail, kidnaping and/or fraudulent extradition of Akers <u>within</u> the State of Tennessee for the express purposes of the Defendants'-Appellants' violations of Akers' privileges and immunities as secured by the United States Constitution; <u>and</u> for which remedies are provided for pursuant to provisions of TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983 & TITLE 42 U.S.C. § 1985(3) - **<u>precisely as Akers is has attempted to do</u> as has been encouraged by the "Congressional purpose" set out in "TITLE 42 U.S.C. § 1988(a)** Applicability of statutory and common law", i.e.,

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in their civil rights, and their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect;"[5]

The District Court further asserts that:

"The only Defendant who resides, is found, has an agent, or conducts his affairs in [the Federal District of Middle Tennessee] is Ernest Williams"; and that: "[a]pparently, [Akers] does not dispute that venue cannot lie in [U. S. District Court for Middle Tennessee-Nashville Division] as to his RICO claims against the other defendants based on 18 U.S.C. § 1965(a). Giving Plaintiff's allegations the liberal construction afforded pro se litigants, however, [Akers] maintains that venue exists here as to the remaining Defendants pursuant to 18 U.S.C. § 1965(b). As expressly stated in the statute, before a district court can summons parties from another district to answer a RICO claim, it must find that 'the

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[5] See also: **Collins v. Chandler Unified School Dist.**, C.A.9 (Ariz.) 1981, 644 F.2d 759, certiorari denied 102 S.Ct. 322, 454 U.S. 863, 70 L.Ed. 2d 163, i.e., "This section is broad and unequivocal and must be liberally construed to achieve congressional purpose of encouraging compliance with and enforcement of civil rights laws."; **Dennis v. Chang**, C.A.9 (Hawaii) 1980, 611 F.2d 1302, i.e., "This section must be liberally construed to achieve congressional purpose to encourage compliance with and enforcement of civil rights laws."; **Donaldson v. O'Connor**, N.D.Fla 1978, 454 F.Supp. 311, i.e., "This section is to be construed to fulfill congressional purpose of encouraging private litigation to enforce civil rights"; & **Johnson v. Summer**, N.D. Miss.1980, 488 F.Supp. 83, i.e., "This section, providing for attorney fees in civil cases, is to be broadly and liberally construed to achieve its intended purpose to compensate counsel who represents prevailing litigants on civil rights claims and to encourage individuals to seek judicial relief, particularly those who might not otherwise attempt to vindicate their rights, and **this is particularly true where individual is faced with opposition from state, with entire resources of state government supporting litigation**." (emph. added)

> ends of justice' so require. What is required to meet "the ends of justice" requirement is not crystal clear, but, at a minimum, the Court must determine that there is no other district which has personal jurisdiction and venue over all members of the alleged RICO conspiracy. ...The Second Circuit, in discussing an assertion of personal jurisdiction based upon 18 U.S.C. § 1965(b), stated as follows:
>
> > 'This jurisdiction is not automatic but requires a showing that 'the ends of justice' so require. <u>There is no impediment</u> to prosecution of a civil RICO action in a court foreign to some defendants <u>if it is necessary</u>...'"[6] [see "EXHIBIT USSC-09", page 4, lines 2-16; & page 5, lines 1-14, emphasis added]

<u>Again</u>, the Court errs. Akers <u>certainly does</u> "dispute that venue cannot lie in [U. S. District of Middle Tennessee] as to his RICO claims against the other defendants" and, as bases therefor, relies upon the very same TITLE 18 U.S.C. § 1965(b) which the Court cites.[6] Moreover, Defendant-Respondent Allen I. Rushing now resides in Pennsylvania and <u>there is no</u> "other district which has both personal jurisdiction and venue over all members of the alleged RICO conspiracy". It just cannot be disputed that the United States District Court for the Middle Tennessee District, at Nashville, is the <u>only</u> proper venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)".

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[6] <u>See also</u>: **<u>Cooper v. Molko</u>**, D.C.Cal., 512 FR.Supp. 563 (1981), i.e., "In action by member of religious group against his parents, venue was proper in Northern District of California where complaint alleged that parents came that district, participated in conspiracy to abduct their son, and held him in motel in district for five days for deprogramming" (emphasis added); & **<u>Jones v. Bales</u>**, D.C.Ga. 58 F.R.D. 453, affirmed 480 F.3d (1972), i.e. "Where action is based on an alleged conspiracy within this section relating to conspiracies for purpose of depriving any class of persons of equal protection of the laws, **the action may be brought in the district <u>where any overt act occurred</u>**." (emphasis added)

ARGUMENT II: **"ORDER" TRANSFERRING VENUE FOR CASE TO EASTERN DISTRICT OF KENTUCKY IS "COLLATERAL TO MERITS" OF THE CASE**

Inasmuch as those factual allegations contained within the hereinabove "STATEMENT OF THE CASE *SUB JUDICE*" [supra, pages 4 through 21 hereof] will speak for themselves and it is not anticipated that even the Defendants-Respondents will contest this issue, Akers will not waste valuable time and effort in addressing it further. Suffice it to say that the "ORDER" issued by Hon. Robert L. Echols, Chief Judge for the United States District Court for the Middle Tennessee District, on September 18, 2001, is "collateral to the merits" of this case.

ARGUMENT III: **TRANSFER OF CASE TO UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY WILL RESULT IN IRREPARABLE DAMAGE TO AKERS**

The list of "lay witnesses" required by Akers' at trial of this case will include residents of four (4) separate and distinct Federal Districts within Kentucky; two (2) separate and distinct Federal Districts within Tennessee; and two (2) separate and distinct Federal Districts within Indiana. All "expert witnesses" required by Akers' at trial are residents of the Federal District of Middle Tennessee. Fearing reprisal by the herein Defendants-Appellees as does Akers, all "lay witnesses" who are residents of Kentucky and Indiana have made it clear that they prefer to testify in the Federal District of Middle Tennessee, at Nashville, and arrange for travel and/or per diem costs at their own expense. The yet undetermined number of lay witnesses who are residents of Middle Tennessee, and the only witnesses who can provide proof as to the "whereabouts" and "demeanor" of Akers during the time period encompassing his fraudulent "First Degree Stalking" conviction, cannot be required to travel in excess of one hundred (100) miles from the venue and it

would be unfeasible for the U. S. District Court for the Eastern District of Kentucky to compel their appearance in Lexington, Kentucky. All nine (9) of Akers' expert witnesses are residents, and maintain offices in Middle Tennessee. Akers just, simply, no longer have the resources to compensate those expert witnesses for travel time, travel expense, and per diem expenses required for testimony in U. S. District Court for the Eastern District of Kentucky at Lexington and there are no expert witnesses within Central Kentucky who can competently testify with respect to the issues raised in Akers' claims. Moreover, **every witness even conceivably required by these Defendants have already testified with respect to every conceivable matter in Akers' numerous trials and/or hearings within Fayette [Kentucky] District & Circuit Courts**. All such testimony is mechanically- recorded on audiotapes and/or videotapes and can be utilized by the Defendants-Appellees, to whatever extent relevant and admissible, pursuant to Rule 804 of the Federal Rules of Evidence. **Akers has no such luxury**.

This Honorable Court is asked to consider the following likely scenario in the event the "ORDER" of transfer issued by United States District Court for the Middle District of Tennessee is allowed to stand:

> (a) **Akers', who is not an attorney** and can no longer afford an attorney after having all his resources depleted in defense of the fraudulent charges in Kentucky and subsequent incarceration in Kentucky, is compelled to re-enter the jurisdiction of the Defendants-Respondents for filings, depositions, pre-trial hearings, and, ultimately, for trial;
>
> (b) The herein Defendants-Respondents, realizing they are in a "no win" situation, then file additional fraudulent charges against Akers pursuant to the yet outstanding, and unconstitutional, "Domestic Violence Order" as detailed in ¶E-118 of Akers' Memorandum;
>
> (c) Akers is then, **yet again**, imprisoned within Kentucky for "God only knows" how long;
>
> (d) Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983;

& TITLE 42 U.S.C. § 1985(3)" is then, subsequently, "DISMISSED FOR FAILURE TO PROSECUTE"; &

(e) The Defendants-Respondents escape liability and exposure of their pervasive corruption.

These Defendants-Respondents have committed equally-dastardly acts in May through July, 1994; October through December, 1995; and May, 1994, through July, 2000, and **not even the Federal Courts can guarantee that the Defendants will not do so again** in order to prevent this case from going forward – thereby avoiding exposure of the pervasive corruption within their ranks.

Truly, the "ends of justice" **require** venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" to remain in the United States District Court for the Middle District of Tennessee, at Nashville.

ARGUMENT IV: ISSUES RESPECTING TRANSFER OF CASE TO THE EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ARE "TOO IMPORTANT" TO "BE DEFERRED UNTIL THE WHOLE CASE IS ADJUDICATED"

Akers hereby re-states and reiterates the arguments as set forth within the hereinabove "ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE TO AKERS" the same as if set forth herein in their entirety.

ARGUMENT V: "ENDS OF JUSTICE" REQUIRE VENUE TO REMAIN IN UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE DISTRICT-NASHVILLE DIVISION

The District Court asserts that:

"Based upon the record, the Court finds that the 'ends of justice' do not require that the...defendants be haled before this court from other districts. First, the entire case can be litigated in the Eastern District of Kentucky. As noted previously, venue is proper in that district and said District Court has personal jurisdiction over every Defendant under Section 1965. More specifically, ...Defendant Williams who lives in Franklin, Tennessee, represented [Akers] in [the Eastern District of Kentucky] during his trial there.[7] See Int'l Shoe Co. v. Washington, 326 U. S. 310, 316 (1945) [i.e.,]

> '...personal jurisdiction requires 'certain minimum contacts' with the forum state and 'that the maintenance of the suit...does not offend traditional notions of fair play and substantial justice.'" [*id.*, page 5, lines 15 -30]

In response, Akers hereby re-states and reiterates the arguments set forth within hereinabove "ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE TO AKERS" the same as if set forth herein in their entirety. Additionally, Akers would point out that he has made repeated efforts within his various pleadings within the United States District Court for the Middle District of Tennessee, at Nashville, to alert that Court of the **ominous perils to Akers if ever returning to anywhere within the jurisdiction of the herein Defendants-Appellees**, e.g.,

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[7] **This assertion is just, simply, false** and is apparently the product of the fraudulent misrepresentations of herein defense counsels, Robert L. Estes [see D.E. #35, page 7, lines 12 - 14] and Kentucky Assistant Attorney General D. Brent Irvin [see D.E. #38, ¶ 5, lines 1 - 3; & D.E. #39, page 11, lines 12 - 14]. Williams was retained by Akers for the **limited purpose** detailed in ¶E-106 of Akers' Memorandum. Williams **has never** filed an "entry of appearance" on behalf of Akers; **Williams has never appeared in any Court proceeding on behalf of Akers; & Williams has never represented Akers in any "trial".**

"The Kentucky Defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the Defendants, thereby subjecting him to "more of the same" oppression and tyranny which gave rise to Akers' claims herein and to facilitate additional violations of Title 18 U.S.C. § 1961, *et seq.*, and Title 42 U.S.C. §§ 1983 & 1985 by those Defendants." ["EXHIBIT USSC-02" hereto, D.E.#68, ¶2(A)(iv), page 5 thereof; & "EXHIBIT USSC-10" hereto, at ¶2(B)(I)(iv), pages 5 & 6]

CONCLUSION

Finally, the District Court asserts as follows:

"...even if the Court permitted Plaintiff to litigate the RICO claims [in U. S. District Court for the Middle Tennessee District] venue would still be improper as to [Akers'] Section 1983 & Section 1985 claims because a substantial part of the events giving rise to [Akers'] claims did not occur in [the Federal District of Middle Tennessee][8] (28 U.S.C. § 1391(b)(2)) and Title 18 U.S.C. § 1965(a) applies only to the RICO claims; not the 1983/ Section 1985. Such a course of action would not promote judicial economy and would delay and add additional hardships to the parties.[9] Therefore, for the reasons stated, the Court concludes that venue does not properly lie in [the U. S. District of Middle Tennessee] for [Akers'] RICO claims." [see "EXHIBIT USSC-09" hereto, page 6, lines 4 - 17, clarification & emphasis added]

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[8] Once again, the Court errs [see hereinabove FN5, supra, page 27 hereof].

[9] **It is astounding that the Honorable Chief Judge for United States District Court for the Middle Tennessee District-Nashville Division would now be concerned about "hardships" to the herein Defendants-Respondents in view of the history of this case, and with no regard to further hardships upon Akers and his witnesses.**

> "**For the foregoing reasons**, Defendants' Motions to Transfer will be GRANTED, and **this case will be TRANSFERRED** to the United States District Court for the Eastern District of Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT.
>
> **An appropriate order will be entered.**" [*id.*, page 7, lines 5 through 9, emphasis added]

Clearly, Akers recognizes that the herein case of "JAMES G. AKERS v. CAROLYN P. BISHOP, *et al*" is a "hot potato" which no one wishes to even pick up - much less hold onto and deal with. Nonetheless, **that is precisely what the Constitution and Laws of the United States of America require**. That is all Akers is asking the Federal Courts to do in this case - **to enforce the Constitution and Laws of the United States of America** and allow "due process of law" to follow its designed course.

WHEREFORE, the Plaintiff-Petitioner, James G. Akers, asks and prays of this Honorable Court to reverse the "ORDER" transferring this action to United States District Court for the Eastern District of Kentucky, as entered on September 18, 2001, by the Hon. Robert L. Echols, Chief Judge for the United States District for the Middle Tennessee District-Nashville Division, and remand with instructions that "venue" shall remain therein in order that Akers may proceed without further hindrance, threat, hardship, and/or undue prejudice in prosecution of his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" and the "ends of justice" may be effectively served.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Petitioner
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843

CERTIFICATION OF COMPLIANCE

PLAINTIFF-PETITIONER, James G. Akers, without counsel, hereby certifies that the foregoing "PETITION FOR WRIT OF CERTIORARI" fully complies with FRAP 32(a)(7)(C) in conjunction with United States Supreme Court Rule 14.

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Petitioner

STATE OF TENNESSEE)
)
) **s/s**
)
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove James G. Akers has personally appeared before me on this, the 23rd day of April, 2002, has acknowledged the foregoing instrument, and subscribed his signature thereto in my presence.

s/ Varessa Johns
NOTARY PUBLIC, Tennessee-at-large

My Commission Expires: 3/26/2005

[END OF DOCUMENT]

C.O.A. CASE NUMBER: 01-6243
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP; et al, Defendants-Appellees.	FILED FEB 13 2002 LEONARD GREEN, Clerk **PETITION FOR:** **STAY OF MANDATE**

ON APPEAL FROM UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE-
NASHVILLE DIVISION

COMES THE PLAINTIFF-APPELLANT, James G. Akers (hereinafter "Akers'), **without counsel**, and, in strict accordance with Title 28 U.S.C. § 1654 in conjunction with FRAP Rule 41(d)(2)(A), 6 Cir. R. 41(b), & 6 Cir. I.O.P. 41(c), files with this Honorable Court the within "PETITION FOR STAY OF MANDATE" otherwise effectuating transfer of this case to United States District Court for the Eastern District of Kentucky, at Lexington.

In support of his herein petition, Akers attaches and appends hereto as "EXHIBIT CA6-10" a draft of the "FINAL BRIEF FOR APPELLANT" which would have been filed pursuant to 6 Cir. R. 28(a), 6 Cir. R. 31(a), and Rules 32 (a) & (b) had the Briefing Schedule not been improperly held in abeyance by Deputy Clerk Diane Schnur on November 27, 2001. In further support, Akers asserts as follows:

1. Akers will file a timely Petition for Writ of Certiorari with the United States Supreme Court to determine the constitutionality and/or equity of this Honorable Court's application of the legal theorems set out in *SongByrd v. Estate of Grossman*, 253 F.2d 680, 683 (2nd Cir.), *cert. denied* 531 U.S. 824 (2000); *Lemon v. Druffel*, 253 F.2d 680, 683 (6th Cir. 1958); *F.D.I.C. v. McGlamery*, 74 F.3d 218, 222 (10th Cir. 1996); & *Middlebrooks v. Smith*, 735 F.2d 431, 432 (11th Cir. 1984) in apparent contravention of the specific language contained within TITLE 28 U.S.C. § 1292(a)(1) in conjunction with the "Collateral Order Doctrine" as well-established in, e.g., ***Cohen v. Beneficial Loan Corp.***, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); ***Abney v. United States***, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977); ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980), citing *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); and ***Firestone Tire & Rubber Co. v. Risjord***, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981).

2. Alternatively, Akers will seek a Writ of Mandamus and/or Writ of Prohibition from the Supreme Court of the United States of America to preclude this case from being transferred to the United States District Court for the Eastern District of Kentucky based upon the issues presented in his timely-filed "RESPONSES" and/or "OBJECTIONS" to the various Defendants'-Appellees' pleadings within this Honorable Court of Appeals for the Sixth Circuit as well as the Honorable United States District Court for the Middle District of Tennessee-Nashville Division.

3. The history of this case and, particularly, the onerous history of Defendants-Appellees Overstreet, Red Corn, Miller, and Witt, make it abundantly clear that Akers will be subjected to extreme peril if ever returning to the Kentucky jurisdiction in which the transferee Federal Court is situated; the "ends of justice" do not require Akers to do so; and it can not reasonably be concluded that Akers will have any adequate remedy whatsoever after "the whole case has been...

...adjudicated" if, in the likely event, he is again fraudulently, oppressively, or otherwise unlawfully imprisoned by these Defendants-Appellees in order to prevent exposure of their corruption.

4. And, finally, this Honorable Court can rest assured that Akers will be prejudiced by deprivation of the physical presence of his witnesses who are residents of Middle Tennessee and intimidation of his witnesses who are residents of Kentucky's Federal Districts in the event this case is required to be litigated in Central Kentucky inasmuch and these Defendants-Appellees have already clearly demonstrated their propensity and prowess for tactics of confusion and delay.

WHEREFORE, the Plaintiff-Appellant, James G. Akers ("Akers'), without counsel, asks and prays of this Honorable Court to "GRANT" the issuance of the herein requested "STAY OF MANDATE" ordering transfer of this case to United States District Court for the Eastern District of Kentucky, at Lexington., pending the disposition of Akers' Petition for Writ of Certiorari or, alternatively, Petition Writ of Mandamus and/or Writ of Prohibition in the Supreme Court of the United States of America in order that Akers' rights and privileges secured by, *inter alia*, the First Amendment to the United States Constitution may be properly preserved.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellant
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024
TELEPHONE: 615/834-2843
FACSIMILE: 615/831-9307

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP, et al, Defendants-Appellees."; (2) I am a citizen of the United States of America and the State of Tennessee therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "PETITION FOR STAY OF MANDATE", together with all "EXHIBITS" appended thereto, via "UNITED STATES MAIL-FIRST CLASS", postage pre-paid, upon each Defendant-Appellee or their respective legal counsel of record in that manner as hereinafter follows: **(Listing of served Parties and/or respective Counsel-of-Record omitted from instant Petition for Writ of Certiorari. See official record for listings.)**

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
) ss.
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 11th day of February, 2002, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, State-at-large
My Commission Expires: 03/26/2005

APPENDIX

("EXHIBIT CA6-10" only)

C.O.A. CASE NUMBER: 01-6243
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS, Plaintiff-Appellant,	)	
v.	)	**FINAL BRIEF** **FOR APPELLANT**
CAROLYN P. BISHOP; *et al*, Defendants-Appellees.	)	PURSUANT TO: 6 CIR. R. 28(a), 32(a); & FRAP 32(a), (b)

ON APPEAL FROM UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE -
NASHVILLE DIVISION

THIS DOCUMENT WAS PREPARED BY:

s/ James G. Akers
JAMES G. AKERS, Plaintiff -Appellant

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STATEMENT OF THE CASE *SUB JUDICE*

On November 21, 2000, the Plaintiff-Appellant, James G. Akers (hereinafter "Akers"), **without counsel**, in strict accordance with Title 28 U.S.C. § 1654, filed his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [D.E. #1] and contemporaneously-filed "MEMORANDUM & MEMORANDUM OF LAW" [D.E. #2] (hereinafter "Akers Complaint" & "Akers' Memorandum", respectively) in the United States District Court for the Middle District of Tennessee - Nashville Division. Jurisdiction was asserted pursuant to the provisions of the Federal Statutes themselves; and venue was asserted on the basis that "the prevailing" overt acts alleged in Akers' Complaint had taken place within

the United States District Court for the Middle District of Tennessee, at Nashville. "Diversity of citizenship" of the parties was, at most, a secondary consideration.

The factual allegations contained within Akers' Complaint, when coupled with the applicable Constitutional, Statutory, & Common Laws of the United States of America and "authorities" in support thereof as contained within Akers' Memorandum, speak for themselves. **Not even a single Defendant-Appellee has attempted to controvert even a single averment** and, in fact, they cannot do so without placing themselves in peril of still further penalties and/or sanctions pursuant to Federal Law. **The "merits" of Akers' herein case are not even arguable**.

On September 18, 2001, the Honorable Robert L. Echols, Chief Judge for the United States District for the Middle District of Tennessee at Nashville, entered his "ORDER" denying the Defendants' various "MOTION[S] TO DISMISS" but granting transfer of this action to the United States District Court for the Eastern District of Kentucky at Lexington [D.E. #80 and accompanying "MEMORANDUM", D.E. #79].[1]

It is apparent that the District Court either: (1) did not read Akers' pleadings in that Court; (2) did not understand Akers' pleadings in that Court; (3) did not afford due credibility to Akers' pleadings in that Court; (4) preferred to accept the Defendants'-Appellees' fraudulent renditions of the facts with respect thereto; and/or (5) ruled based upon a combination of "all the above".

As a matter of right, this appeal follows pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with the "Collateral Order Doctrine" as set out in **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**, in which the United States Supreme Court held that "...**certain orders were immediately appealable** (1) if they were **collateral to the**

merits; (2) if denial of an immediate appeal...

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[1] See hereunto relevant excerpts therefrom as quoted within Akers' hereinafter "ARGUMENT(S) I through V" & "CONCLUSION", pages 23 through 29 hereof.

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would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until the whole case is adjudicated."[2]

JURISDICTION (U. S. DISTRICT COURT)

The United States District for the Middle District of Tennessee, at Nashville, had both jurisdiction and venue pursuant to provisions of TITLE 18 U.S.C. § 1964(c); TITLE 18 U.S.C. § 1965(b); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3).

JURISDICTION (U. S. COURT OF APPEALS)

The United States Court of Appeals for the Sixth Circuit has jurisdiction to hear and adjudicate the within appeal, and to consider all matters with respect thereto, pursuant to the "Collateral Order Doctrine" as set forth in **Armstrong v. McAlpin, 625 F.2d 433, C.A.N.Y. (1980)**, citing **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)** in conjunction with **TITLE 28 U.S.C. § 1292(a)(1)**.

STATEMENT OF FACTS (SUMMARY STATEMENT)

The following are excerpts from Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [D.E. #1] as filed...

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[2] See also: **Clemence v. Clemence, 8 Kan.App.2d 377, 658 P.2d 368 (1983), i.e., "'Collateral order' doctrine allows appeal from interlocutory order**

which conclusively determines issue completely separate from merits of action, and which cannot be given effective review on appeal from subsequent final judgement; **such order is, for purposes of appellate jurisdiction, 'final order'"** (emphasis added); **Firestone Tire & Rubber Co. v. Risjord, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)**, i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, **the order...is appealable under § 1291 only if it falls within the *Cohen* doctrine.**" (emphasis added); **Abney v. United States, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)** at FN4, i.e., "Of course, **Cohen's collateral-order exception is equally applicable in both civil and criminal proceedings.**" (emphasis added)

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in the United States District Court for the Middle District of Tennessee, Nashville Division, on November 21, 2000:

> "1. On August 25, 1993, just two (2) months preceding the twenty-fifth (25th) anniversary of his marriage to Defendant Carolyn P. Bishop (nee Carolyn J. Patrick, then Carolyn P. Akers, now Carolyn P. Bishop, and referred to hereinafter as 'Bishop'), the Plaintiff, James G. Akers (hereinafter 'Akers') was awarded a sizeable cash settlement on behalf of Coleman/Akers & Akers, Incorporated (hereinafter 'C/AA'), a Kentucky corporation owned an operated by Akers and based in the Lexington, Kentucky, area. The series of outrageous events which have transpired thereafter, and as set forth hereinafter in detail, have been such that should shock the very conscience of any responsible citizen of a free and democratic society in the modern world.
>
> 2. In a manner strikingly similar to historical accounts of colonial Salem, Massachusetts; 'Nazi Germany; and 'cold war era' Soviet Bloc countries, Defendant Bishop and her hereinafter named co-conspirators have devised, effectuated, and perpetuated schemes to unlawfully seize, withhold, divert, and convert the property of Akers with intent to deprive him thereof; to unlawfully circumvent and/or abridge all of Akers' inalienable and lawful rights

pursuant to, ***inter alia***, Article I-Sections 9 & 10, Article III-Section 2, Article IV-Section 2, and the First, Fourth, Fifth, Sixth, Eighth, Thirteenth, and Fourteenth Amendments of/to the United States Constitution and, in both overt and covert concealment of those said schemes, to oppressively deprive Akers of his liberty in such a manner as is hereinafter set forth in detail. Those said schemes and actions of and/or by the named herein Defendants have not been limited to 'civil rights violations' under 'color of state law', 'color of office', and/or 'malicious prosecution' but extend, in fact, to criminal acts in blatant and direct violation of the Federal Laws as hereinafter enumerated.

3. As will be hereinafter shown, in detail, the Plaintiff Akers was: (a) assaulted, decoyed, inveigled, and robbed in May and June of 1994 and, in the covert concealment thereof, was; (b) unlawfully imprisoned in May and July of 1994 and, in covert concealment thereof; (c) blackmailed and/or extorted from July of 1994 through March of 1995, and in further concealment thereof; (d) essentially 'kidnapped' and fraudulently held in Nashville, Tennessee, during August and September, 1995, and, in the covert concealment thereof; (e) fraudulently extradited back to Kentucky in October of 1995 and, in the further concealment of the hereinbefore schemes; (f) fraudulently and maliciously accused, prosecuted, convicted, and then imprisoned in custody of the Fayette County [Kentucky] Sheriff and/or Kentucky Department of Corrections from May 22, 1996, until April 15, 1998, when; (g) Akers was released from custody on a $52,000 Full Cash Bond pursuant to an 'Opinion and Order', as rendered February 27, 1998, by the Kentucky Court of Appeals, which ruled that Akers' convictions and resulting imprisonment had been unlawfully achieved.

4. In the further concealment of those said schemes of/by the Defendants, and as an intentional and continuing course of conduct by them, Akers was: (a) further blackmailed/extorted in March of 1998; was

(b) further oppressively imprisoned in April of 1998; was (c) further blackmailed and/or extorted from April through October of 1998, ...

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and then; (d) yet again, oppressively and unlawfully prosecuted, convicted, and then imprisoned for the very same unconstitutional and fraudulent felony charges, pursuant to the very same unconstitutional and fraudulent indictment, as was the case in May of 1996.

5. Following Akers' additional unlawful, oppressive, and unconstitutional imprisonment since October 28, 1998, the Court of Appeals of Kentucky rendered Its second 'Opinion' on May 19, 2000, in which It reversed (in part) Akers' convictions for the second time and ruling, in hereunto relevant part, as follows:

'It is clear that the trial court failed to follow our instructions on remand';

'The court heard arguments as to the admissibility of the evidence. Prior to making its ruling, the court acknowledged that it had not read our decision';

'Without reading our decision, the court could not have followed our directives';

'While our opinion did not specifically so require, the trial court should have granted Akers separate trials on each count';

'By not holding separate trials, the trial court abused its discretion and denied Akers a fair trial...';

'Fairness and justice require us to reverse his (Akers) conviction...'

6. Akers is not an attorney, and does not have any formal training or education in the Law. Having

been forced to expend vast resources in defense of the hereinafter enumerated unlawful acts committed by the named Defendants, and ancillary expenses related thereto, Akers can no longer afford, nor will he seek, further assistance and/or counsel of attorneys with respect to the matters set forth herein." [D.E. #1, pages 2 - 5]

"**COUNT ONE - CONSPIRACY**

128. In about mid-July, 1993, in Fayette County, Kentucky, Defendants Pamela Miller, Katherine Witt, and LFG Does 1 thru 50 (known only as that group of individual persons and/or public officials within the Lexington-Fayette Urban County Government and 'associated-in-fact') jointly devised, implemented, and effectuated a 'conspiracy' in violation of TITLE 42 U.S.C. § 1985(2) & (3), ***inter alia***, to unlawfully deprive that class of persons which included Plaintiff Akers of rights, privileges, and/or immunities secured by, ***inter alia***, the Fourth, Fifth, & Fourteenth Amendments to the United States Constitution to the extent and in that manner more specifically set forth in hereinabove paragraphs 1, 2, 3(a), 3(b), 12 and more fully detailed in paragraph E-12 (and corresponding footnote [41] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'conspiracy' ultimately resulted in a 'chain conspiracy' in furtherance thereof as detailed in hereinafter 'COUNTS TWO, THREE, FOUR, TWELVE, & TWENTY-TWO'; and which 'chain conspiracy' ultimately resulted in commission of those 'overt acts' detailed in 'COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN' hereof; 'unlawful imprisonment' as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof;

and which 'conspiracy', 'chain conspiracies', 'overt acts', and 'unlawful imprisonment' ultimately resulted in injuries to Akers' person and property as detailed in 'COUNTS TWENTY-FOUR & TWENTY-SIX' hereof.

COUNT TWO - CHAIN CONSPIRACY

129. At some time shortly following August 25, 1993, in Fayette County, Kentucky, Defendants Bishop, Fleming, Rushing, and CBT Does 1 through 40 (known only as a group of persons at Central Bank & Trust Company, Inc., and 'associated-in-fact'), jointly devised a 'chain conspiracy' in violation of TITLE 18 U.S.C. § 1985(2) & (3), ***inter alia***, in the furtherance of that 'conspiracy' detailed in hereinabove 'Count One', to unlawfully and/or unconstitutionally deprive Plaintiff Akers of his rights, privileges, and/or immunities secured by, ***inter alia***, Article 1-Section 10 [Cl.1], & Article IV-Section 2 [Cl.1] of the United States Constitution, in conjunction with the Fourth, Fifth, & Fourteenth Amendments thereto, in that manner as set forth in hereinabove paragraphs 3(a), 3(b), 3(c), 9, 12, 13, 14(d), 16, 17, 23 through 27, 29, 31 through 36, 38 through 41, 43, 44, 47, 48, 50(e), & 50(f), and more fully detailed in paragraphs E-12, E-13, E-14(d), E-16, E-17, E-23 through E-27, E-29, E-31 through E-36, E-38 through E-41, E-43, E-44, E-47, E-48, E-50(e), & E-50(f) (together with all corresponding footnotes respectively thereto) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' hereto; and which said 'chain conspiracy' ultimately resulted in commission of 'overt acts' as detailed in 'COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN' hereof; 'unlawful imprisonment' detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and property as detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT THREE - CHAIN CONSPIRACY

130. On, or about, April 8, 1994, in Fayette County and/or Mercer County, Kentucky, Defendants Layne and Shannon joined in the furtherance of that 'chain conspiracy' detailed in hereinabove "COUNT TWO" by committing specific acts in the furtherance thereof in that manner set forth in the hereinabove paragraphs 24 through 27, 29, 31(a), 31(b), 31(c), 34, 38, 40, 43, 44, & 50 (e) and more specifically detailed in paragraphs E-24 through E-27, E-29, E-31(a), E-31(b), E-31(c), E-34, E-38, E-40, E-43, E-44, & E-50(e), together with all corresponding and referenced footnotes thereto, respectively, of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which said 'chain conspiracy' ultimately resulted in commission of those 'overt acts' as detailed in 'COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN' hereof; 'unlawful imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and property detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT FOUR - CHAIN CONSPIRACY

131. On, or about, June 16, 1994, in Fayette County and/or Mercer County, Kentucky, Defendants Vaughan, Kelly, and SCC Does 1 thru 50 (known only as a group of individual persons at the Southland Church of Lexington, Inc., and 'associated-in-fact')...

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joined in the furtherance of that 'chain conspiracy' outlined in hereinabove 'COUNTS TWO & THREE' by committing specific acts in furtherance thereof in that manner as set forth in hereinabove paragraphs 41, 42, 46, 48, & 50 and as more fully detailed in paragraphs E-41, E-42, E-46, E-48, & E-50 (together with all the corresponding footnotes thereto, respectively) of Akers'

herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which said 'chain conspiracy' ultimately resulted in commission of those 'overt acts' as detailed in 'COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN' hereof; 'unlawful imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT FIVE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

132. On, or about, October 28, 1994, in Fayette County and/or Mercer County, Kentucky, Defendants Bishop, Fleming, Rushing, CBT Does 1 through 40 (known only as a group of persons at Central Bank & Trust Company, Inc., 'associated-in-fact'), Layne, Shannon, Kelly, SCC Does 1 through 50 (known only as that group of persons at the Southland Christian Church of Lexington, Inc., and 'associated-in-fact'), collectively and in concert each with another, with a common scheme and purpose, devised, implemented, and effectuated an intentional course of conduct in furtherance of hereinabove 'COUNTS TWO through FOUR', with the intent to deprive Plaintiff Akers of rights, priveleges, and immunities secured by, ***inter alia***, Article I-Section 9 [Cl. 1], Article IV-Section 2 [Cl. 1], of the United States Constitution and the Fourth, Fifth, & Fourteenth Amendments thereto and, in addition thereto, ***inter alia***, Article 1, Sections 3, 8, & 14 of the Constitution of Tennessee, by committing specific 'overt acts' in furtherance thereof and in the manner as set forth in hereinabove paragraphs 2, 3(c), 51, 54, 56 through 58, & 61 through 68 as more detailed within paragraphs E-51, E-54, E-56 through E-58, & E-61 through E-68, (together with all referenced and correspondingly-noted footnotes thereto, respectively) of Akers' contemporaneously-filed 'MEMORANDUM &

MEMORANDUM OF LAW' herewith; and which said 'overt acts' ultimately resulted in 'unlawful imprisonment' detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR & TWENTY-SIX' hereof.

COUNT SIX - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

133. On, or about, March 21, 1995, in Fayette County and/or Mercer County, Kentucky, Defendants Witt and FCS Does 1 through 30 (known only as that group of persons at the Fayette County Sheriff's office and 'associated-in-fact') joined in the furtherance of that 'collective and concerted common scheme and purpose' as outlined in hereinabove 'COUNT FOUR' by committing specific 'overt acts' in the furtherance thereof, in the manner set forth in hereinabove paragraphs 61, 63, 77, & 79 and more specifically detailed in paragraphs E-61, E-63, E-77, & E-79 (together with all corresponding and referenced footnotes thereto, respectively) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which said 'overt acts' ultimately resulted in 'unlawful imprisonment' of Akers as detailed in...

...'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR & TWENTY-SIX' hereof.

COUNT SEVEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

134. On, or about, March 21, 1995, in Fayette County and/or Mercer County, Kentucky, Defendants Clark, LFG Does 1 through 60 (known only as that group

of persons at the Lexington-Fayette Urban County Government and 'associated-in-fact'), and CAO Does 1 through 20 (known only as that gpoup of persons at the Office of the Commonwealth's Attorney for the Twenty-second Judicial District, and 'associated- in-fact') joined in the furtherance of that aforesaid 'collective and concerted common scheme and purpose' as outlined in hereinabove 'COUNTS FOUR through SIX' by committing specific acts in the furtherance thereof in that manner set forth in the hereinabove paragraphs 61, 63, 77, & 79 and more specifically detailed in paragraphs E-61, E-63, E-77, & E-79 (together with all corresponding and referenced footnotes thereto, respectively) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which said 'overt acts' ultimately resulted in 'unlawful imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR & TWENTY-SIX' hereof.

COUNT EIGHT - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

135. On, or about, November 1, 1995, in Fayette County, Kentucky, Defendant Red Corn joined in that 'chain conspiracy' as detailed in hereinabove 'COUNTS ONE through FOUR' and the aforesaid 'collective and concerted common scheme and purpose' as detailed in hereinabove 'COUNTS FIVE, SIX, and SEVEN' by committing specific 'overt acts' in furtherance thereof in that manner set forth in the hereinabove paragraphs 82, 83, 84, 85, 86.I through 86.X, 89, 90(a), 90(b), 90(d), 92, 94, & 96 and more specifically as detailed in paragraphs E-82, E-83, E-84, E-85, E-86.I through E-86.X, E-89, E-90(a), E-90(b), E-90(d), E-92, E-94, & E-96 (together with all the corresponding and referenced footnotes thereto, respectively) of Akers' herewith and contemporaneously-filed 'MEMORANDUM &

MEMORANDUM OF LAW'; and which said 'overt acts' ultimately resulted in 'unlawful...

...imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT NINE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

136. On, or about, November 1, 1995, in Fayette County, Kentucky, Defendant Overstreet joined in that 'chain conspiracy' as detailed in hereinabove 'COUNTS ONE through FOUR' and the aforesaid 'collective and concerted common scheme and purpose' as detailed in above 'COUNTS FIVE through EIGHT' by committing specific 'overt acts' in furtherance thereof in that manner set forth in the hereinabove paragraphs 81, 82, 84, 86.I through 86.X, 87, & 88 and as more specifically detailed in paragraphs E-81, E-82, E-84, E-86.I through E-86.X, E-87, & E-88 (together with all the corresponding footnotes thereto, respectively) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which said 'overt acts' ultimately resulted in 'unlawful imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT TEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

137. On, or about, March 5, 1997, in Franklin and/or Fayette County, Kentucky, Defendant Schwartz joined in that 'chain conspiracy' detailed in hereinabove 'COUNTS ONE through FOUR' and 'collective and

concerted common scheme and purpose' as detailed in hereinabove 'COUNTS through EIGHT' by committing specific 'overt acts' in furtherance of those 'conspiracies' and 'overt acts' in furtherance thereof in that manner set forth in the hereinabove paragraphs 91 & 93 and more specifically as detailed in paragraphs E-91 & E-93 (together with corresponding footnotes thereto, respectively) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' hereto; and which 'overt acts' contributed to the 'unlawful imprisonment' of Akers; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT ELEVEN - UNLAWFUL IMPRISONMENT

138. As the proximate result of those 'conspiracies', and 'chain conspiracies' as detailed in hereinabove 'COUNTS ONE through FOUR', and 'overt acts' in the furtherance thereof as detailed in hereinabove 'COUNTS FIVE through TEN', Akers was 'unlawfully imprisoned' in an aggregate of SEVEN HUNDRED TWENTY-EIGHT (728) DAYS in the custody of the Fayette County [Kentucky] Sheriff, Davidson County [Tennessee] Sheriff, and the Kentucky Department of Corrections, respectively, and thereby injured in his person and in his property in that manner as detailed within hereinabove paragraphs 122(b), 125, & 126, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT TWELVE - FURTHER CHAIN CONSPIRACY/COVER-UP

139. Beginning on, or about, February 27, 1998, and continuing through July 7, 2000, in Fayette County, Mercer County, and/or Franklin County, Kentucky, Defendants Bishop, Fleming, CBT Does 1 through 40 (known only as that group of persons at Central Bank & Trust Company, Inc., and 'associated-in-fact'), Layne, Shannon, SCC Does 1 thru 50 (known only as a group of individual persons at Southland Church of Lexington,

Inc., and 'associated-in-fact'), Vaughan, Red Corn, Overstreet, & Ferguson engaged in an intentional and continuing course of conduct in the furtherance of those 'conspiracies' and/or 'chain conspiracies' as detailed hereinabove 'COUNTS ONE through FOUR', and those 'overt acts' in furtherance thereof as detailed in hereinabove 'COUNTS FIVE through TEN', by committing additional 'overt acts' in the furtherance and covert concealment thereof as detailed in hereinabove paragraphs 97, 98, 99, 103, 104, 106, 107, 108, 110.I through 110.X, 111 through 117, 119, & 121 and more specifically as detailed in paragraphs E-97, E-98, E-99, E-103, E-104, E-106, E-107, E-108, E-110.I through E-110.X, E-111 through E-117, E-119, & E-121 (together with all the corresponding and referenced footnotes thereto, respectively) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'overt acts' resulted in...

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...further 'unlawful imprisonment' of Akers detailed in hereinabove 'COUNT FOURTEEN'; and further injuries to Akers in his person and his property detailed in 'COUNTS TWENTY-FIVE & TWENTY-SIX' hereof; all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT THIRTEEN - FURTHER OVERT ACTS/COVER-UP

140. At some time after October 28, [1998], in Fayette County, Kentucky, FCC Does 1 through 10 (known only as a group of persons at the Office of the Fayette [Kentucky] County Court Clerk Office, and 'associated- in-fact') joined in that 'further chain conspiracy' as detailed in hereinabove 'COUNT TWELVE' when they engaged in an intentional and continuing course of conduct in the furtherance thereof

by committing additional 'overt acts' in furtherance and covert concealment thereof by fraudulently redacting that portion of the 'official state court record' as detailed in hereinabove paragraph 110.V(k), thereby contributing to the further 'unlawful imprisonment' of Akers as detailed in hereinabove "COUNT FOURTEEN"; and further injuries to Akers in his person and property detailed in herein 'COUNTS TWENTY-FIVE & TWENTY-SIX', in violation of TITLE 18 U.S.C. §§ 1983 & 1985.

COUNT FOURTEEN - UNLAWFUL IMPRISONMENT/COVER-UP

141. As the proximate result of those 'conspiracies', 'chain conspiracies' detailed in hereinabove 'COUNTS ONE through FOUR'; and 'overt acts' in the furtherance thereof as detailed in hereinabove 'COUNTS FIVE, SIX, SEVEN, EIGHT, TEN, & TWELVE', Akers was again 'unlawfully imprisoned' in an aggregate of SIX HUNDRED SEVEN (607) DAYS in the custody of the Fayette County [Kentucky] Sheriff and the Kentucky Department of Corrections, respectively, and thereby further injured in his person and his property in that manner as detailed in hereinabove paragraphs 122(b), 125, & 126, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT FIFTEEN - R.I.C.O. VIOLATIONS

142. In the course thereof those hereinabove 'COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of persons at the Southland Christian Church of Lexington, Inc., and 'associated-in-fact'), collectively and in concert each with the other, with common scheme and purpose, devised, effectuated, and/or otherwise participated in and, thereby, committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activitiy' as enumerated in hereinafter subparagraphs 142(a) through

142(d); and used income derived therefrom to acquire and/or maintain interests in and/or participate in conduct of affairs of the 'enterprises' known as Southland Christian Church of Lexington, Inc., and the 'Association-in-fact' (comprised of all the hereinabove 'persons' named as 'Defendants' herein, both jointly and severally, as herein 'associated-in-fact') through a 'pattern of racketeering activity'; and the 'activities' of which said 'enterprises' having and maintaining affects on both 'interstate and foreign commerce' at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those specific 'predicate acts' are as hereinafter enumerated:

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(a) On, or about, May 12, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of persons at Southland Christian Church of Lexington, Inc., and 'associated-in-fact'), collectively and in concert each with the other, with common scheme and purpose, devised, effectuated, and/or otherwise participated in the commission of 'kidnapping' in violation of Title 18 U.S.C. § 1201 and K.R.S. 508.130, in preparation for the hereinafter predicate acts depicted 'COUNT FIFTEEN(b) & (c)', in that manner as set forth in hereinabove paragraphs 31, 32, 33, 34, & 38, and as further detailed in parapraphs E-31, E-32, E-34, & E-38 (with all corresponding footnotes thereto, respectively) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which 'predicate act' ultimately resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraphs 125 & 127;

(b) From May 12, 1994 until June 29, 1994, in both Fayette County, Kentucky, and/or Centre City, Minnesota, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of persons at Southland Christian Church of Lexington, Inc., as herein 'associated-in-fact'), acting collectively and in concert one with the other, in covert preparation for that further predicate act depicted as 'COUNT FIFTEEN(c)' hereof, and with a common scheme and purpose, devised, implemented, effectuated, or otherwise participated in, the additional predicate act of 'unlawful imprisonment' of Akers in violation of K.R.S. 509.020 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a), in that manner detailed in hereinabove paragraphs 31, 32, 33, 34, & 38 and as further detailed in parapraphs E-31, E-32, E-34, & E-38 (together with all corresponding footnotes thereto, respectively) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate act' ultimately resulted in injuries to Akers in his person, businesses, and property as further detailed in hereinabove paragraphs 125 & 127;

(c) On, or about, June 28, 1994, in Fayette and/or Mercer County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of persons at Southland Christian Church of Lexington, Inc., as herein 'associated-in-fact'), acting collectively and in concert each with the other, and with a common scheme and purpose, devised, effectuated, and/or otherwise participated in, the additional predicate act of 'theft by unlawful taking or disposition' of property of Akers and hereinabove Coleman/Akers & Akers, Inc. (C/AA) valued in excess of $300.00, in violation

of K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a), in that manner as is set forth in hereinabove paragraphs 43 and further detailed in parapraph E-43 (together with corresponding footnotes [55] & [56] thereto) of Akers' contemporaneously-filed 'Memorandum & Memorandum of Law' herewith; and which 'predicate act' ultimately resulted in injuries to Akers in his businesses and property detailed in hereinabove paragraphs 125 & 127; &

(d) On, or about, June 28, 1994, in Fayette and/or Mercer County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of persons at Southland Christian Church of Lexington, ...

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...Inc., as herein 'associated-in-fact'), acting collectively and in concert each with the other, and with a common scheme and purpose, devised, effectuated, and/or otherwise participated in, the further predicate act of 'tampering with physical evidence' in violation of Title 18 U.S.C. § 1512 and K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a), in that manner as is set forth in hereinabove paragraph 43 and further detailed in parapraph E-43 (with corresponding footnotes [55] & [56] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate act' ultimately resulted in injuries to Akers in his person, businesses, and property as detailed in hereinabove paragraphs 125 & 127.

COUNT SIXTEEN - R.I.C.O. VIOLATIONS

143. In the course thereof those hereinabove 'COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop, Fleming, and Vaughan collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in and, thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity' as enumerated in hereinafter subparagraphs 143(a); and used income derived therefrom to acquire and/or maintain interests in and/or participate in conduct of the affairs of the 'enterprises' known as Dr. John J. Vaughan, M. D., and the 'Association-in-fact' (comprised of all hereinabove 'persons' named as 'Defendants' herein, both jointly and severally, and 'associated-in-fact') through such a 'pattern' of 'racketeering activity'; and the 'activities' of those said 'enterprises' having maintained affects on 'interstate and foreign commerce'; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those specific "predicate acts" are as hereinafter enumerated:

(a) Beginning on, or about, June 16, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and Vaughan, proceeding in concert each with the other, with a common scheme and purpose, devised, effectuated, implemented, and/or otherwise participated in, the commission of the predicate acts of 'wire fraud' (in violation of Title 18 U.S.C. § 1341) and 'mail fraud' (in violation of Title 18 U.S.C. § 1343) in that manner as set forth in hereinabove paragraphs 2, 8, 28, 35, 36, 41, 42, 48, & 49 and further detailed in parapraphs E-2, E-8, E-28, E-35, E-36, E-41, E- 42, E-48, & E-48 (together with all corresponding and referenced footnotes thereto, respectively) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which 'predicate acts' ultimately resulted in

injury to Akers in his person, businesses, and property as detailed in hereinabove paragraphs 125 & 127.

COUNT SEVENTEEN - R.I.C.O. VIOLATIONS

144. In the course thereof those hereinabove 'COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop, Fleming, and Kelly collectively and in concert each with the other, with a common scheme and purpose, devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity' as enumerated in hereinafter subparagraph 144(a), in attempt to derive funds therefrom for use in acquisition

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of, or maintaining interests in, and/or participating in the conduct of the affairs of the 'enterprise' known as the 'Association-in-fact' (comprised of all hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and 'associated-in-fact') through a 'pattern' of "racketeering activity'; and the 'activities' of which said 'enterprises' having had and/or maintained affects on both 'interstate and foreign commerce' at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those said specific 'predicate acts' are as hereinafter enumerated:

(a) On, or about, September 23, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and/or Kelly, collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the commission of 'forgery in the second degree' (in violation of K.R.S. 516.030), and 'theft by extortion' (in violation of K.R.S. 514.040), both being violations of TITLE 18 U.S.C.

§§ 1961 & 1962, in that manner set forth in hereinabove paragraph 50 and as further detailed in paragraph E-50 (with corresponding footnote [62] thereto) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate acts' ultimately resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraphs 125 and 127 and/or 'COUNTS TWENTY-FOUR, TWENTY-SIX, & TWENTY-SEVEN' hereof.

COUNT EIGHTEEN - R.I.C.O. VIOLATIONS

145. In the course thereof those hereinabove 'COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop & Rushing, acting in concert each with the other, with a common scheme, devised and/or effectuated and, thereby, committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity' as enumerated in hereinafter subparagraph 145(a), in an overt attempt to use income derived therefrom in acquisition of, maintaining interest in, and participating in conduct of the affairs of, the 'enterprise' known as the 'Association-in-fact' comprised of all hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and 'associated-in-fact') through a 'pattern' of 'racketeering activity'; and the 'activities' of which said 'enterprise' both having and maintaining affects on 'interstate and foreign commerce' at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those specific 'predicate acts' are as hereinafter enumerated:

(a) Beginning on, or about, October 23, 1994, via interstate telephonic communications between Fayette County, Kentucky, and Williamson County, Tennessee, Defendants Bishop and Rushing, acting in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or otherwise

participated in the commission of the two and distinctly separate predicate acts of 'blackmail' (in violation of Title 18 U.S.C. § 873); and 'extortion' (in violation of Title 18 U.S.C. § 875); both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in hereinabove paragraph 56 and more specifically detailed in paragraph E-56 (together with corresponding footnote [67] thereto) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which 'predicate acts' resulted in injuries to Akers in his businesses and in his property as detailed in hereinabove paragraphs 125 & 127.

COUNT NINETEEN - R.I.C.O. VIOLATIONS

146. In the course thereof those hereinabove 'COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN thru EIGHTEEN', Defendant Red Corn joined in those 'conspiracies', 'chain conspiracies', and 'overt acts' in furtherance thereof on, or about November 1, 1995, in Fayette County and/or Mercer County, Kentucky, and acting both independently and in concert and/or consortium with those other Defendants named herein, with a common scheme and purpose, devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity' as enumerated in hereinafter subparagraph 146(a) through 146(d), and having derived funds therefrom, and attempting to derive additional funds therefrom for her use in acquisition of, or maintaining interests in, or participating in the conduct of the affairs of the 'enterprise' known as the 'Association-in-fact', comprised of all the hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and

'associated-in-fact') through a 'pattern' of 'racketeering activity'; and the 'activities' of which having affects on 'interstate and/or foreign commerce'; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those 'predicate acts' are as hereinafter enumerated:

> (a) On, or about, November 6, 1995, in Fayette County, Kentucky, Defendant Red Corn collaborated with, unlawfully influenced, assisted, and/or directed Defendant Bishop in fraudulent testimony before the Fayette County [Kentucky] Grand Jury and, therefore, acted in concert with Bishop, with a common scheme and purpose, in effectuating and/or participating in commission of the 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in hereinabove paragraphs 81 & 82 and as further detailed in paragraphs E-81 & E-82 (with corresponding footnotes [81] & [82] thereto) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which 'predicate acts' ultimately resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 125 & 127 and 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof;
>
> (b) In mid-May, 1995, in Fayette County, Kentucky, via telephonic communications to Pulaski County, Kentucky, Defendant Red Corn effectuated commission of the 'predicate act' of 'tampering with a witness' in violation of TITLE 18 U.S.C. § 1512 and, thereby, violated provisions of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in hereinabove paragraph 86.I(a) and further detailed in paragraph E-86.I(a), together with corresponding footnote [85]

thereto, of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which said 'predicate act' resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and/or 'COUNT TWENTY-SEVEN' hereof;

(c) On May 20 through May 22, 1995, in Fayette County, Kentucky, Defendant Red Corn committed numerous of the 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of...

...TITLE 18 U.S.C. §§ 1961 & 1962, in those manners as set forth in hereinabove paragraphs 86.II through 86.VIII and further detailed in paragraphs E-86.II through E-86.VIII (together with corresponding footnotes [86] through [93] thereto) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which such additional 'predicate acts' further resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof; &

(d) On October 26 through 28, 1998, in Fayette County, Kentucky, Defendant Red Corn committed numerous of the 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in hereinabove paragraphs 110.III through 110.VII,

110.IX, & 110.X, as further detailed in paragraphs E-110.III through E-110.VII, E-110.IX, & E-110.X (together with corresponding footnotes [108] thru [126] thereto) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which additional 'predicate acts' resulted in further injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and "COUNT TWENTY-SEVEN" hereof.

COUNT TWENTY - R.I.C.O. VIOLATIONS

147. In the course thereof those hereinabove 'COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN thru EIGHTEEN', Defendant Overstreet joined in those 'conspiracies', 'chain conspiracies', and 'overt acts' in furtherance thereof on, or about, November 10, 1995, in Fayette County and/or Mercer County, Kentucky, and acting both independently and in concert and/or consortium with those other Defendants named herein, with a common scheme and purpose, devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity', as enumerated in hereinafter subparagraphs 146(a) & 146(b), and having derived funds therefrom, and attempting to further derive additional funds therefrom for her use in acquisition of, and/or maintaining interests in, and/or participating in conduct of the affairs of the 'enterprise' known as the 'Association-in-fact' (comprised of all hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and 'associated-in-fact') through a 'pattern of racketeering activity'; and the 'activities' of which 'enterprise' having affects on 'interstate and/or foreign commerce'; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those 'predicate acts' are as hereinafter enumerated:

(a) On May 20 through May 22, 1995, in Fayette County, Kentucky, Defendant Overstreet

committed two or more 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners as set forth in hereinabove paragraphs 86.II through 86.VIII and further detailed in paragraphs E-86.II through E-86.VIII (together with corresponding footnotes [86] through [93] thereto) of Akers'... contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF...

LAW'; and which such additional 'predicate acts' further resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof; &

(b) On October 26 through 28, 1998, in Fayette County, Kentucky, Defendant Overstreet committed two or more 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in hereinabove paragraphs 110.III through 110.VII, 110.IX, & 110.X and as further detailed in paragraphs E-110.III through E-110.VII, E-110.IX, & E-110.X (together with corresponding footnotes [108] thru [126] thereto) of Akers; contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which additional 'predicate acts' resulted in further injuries to Akers in his businesses and/or

property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof.

COUNT TWENTY-ONE - R.I.C.O. VIOLATIONS

148. On, or about, September 2, 1998, in Fayette County, Kentucky, and/or Williamson County, Tennessee, and/or through telephonic communications there between, Defendants Red Corn, Overstreet, and Williams, acting both independently and/or in consortium each with another, engaged in an intentional course of conduct directed at Akers and, with a common scheme and/or objective, participated in, and thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity', as enumerated in hereinafter subparagraph 148(a) through 148(c); having derived funds therefrom, and attempting to derive additional funds therefrom for use in acquisition of, maintaining interests in, and/or participating in conduct of the affairs of the 'enterprises' known only as 'Ernest W. Williams, Attorney-at-law' and the 'Association-in-fact' (comprised of all hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and herein 'associated-in-fact'); through a 'pattern of racketeering activity'; and the 'activities' of which each such 'enterprises' having and maintaining affects on 'interstate and/or foreign commerce' at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and as follows:

(a) 'Blackmail' (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 873, ***inter alia***, and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in hereinabove paragraphs 106 & 107 and further detailed in paragraphs E-106 & E-107 (together with footnote [106] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate acts' further enhanced injuries to Akers in his businesses and

property as detailed in hereinabove paragraph 127 and/or 'COUNT TWENTY-SEVEN' hereof;

(b) 'Extortion' (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 875, ***inter alia***; and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in hereinabove paragraphs 106 & 107 and further detailed in paragraphs E-106 & E-107 (together with footnote [106] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate acts'...

...further enhanced injuries to Akers in his businesses and property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof; &

(c) 'Civil rights intimidation' (in violation of Tennessee Code Annotated 39-17-309 in that manner set forth in hereinabove paragraphs 106 & 107 and further detailed in paragraphs E-106 & E-107 (together with footnote [106] thereto) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; each such 'predicate act' depicted as 'COUNT TWENTY-ONE(a), (b), & (c)' hereof being violations of TITLE 18 U.S.C. §§ 1961 & 1962; and which additional "predicate acts" further enhanced injuries to Akers in his businesses and property detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof.

COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP

149. On, or about, March 30, 2000, in Fayette County, Kentucky, Defendants Bishop, Fleming, Layne, and Witt continued in those 'conspiracies' as detailed in hereinabove 'COUNTS TWO, THREE, & FOUR'; and 'overt acts' in the furtherance thereof as detailed in 'COUNTS FIVE, SIX through TEN, and THIRTEEN'; and in concealment of those 'R.I.C.O. Violations' as detailed in hereinabove 'COUNTS FIFTEEN through TWENTY-ONE', by conspiring to, participating in, and otherwise effectuating further schemes to deprive Akers of his privileges and/or immunities secured by, ***inter alia***, Article I-Section 9 [Cl. 2], Article I-Section 10 [Cl. 1], Article IV-Section 2 [Cl. 1], and the First, Fourth, Fifth, Sixth, & Fourteenth Amendments of/to the United States Constitution, and Article 1, Sections 8 & 10 of the Constitution of Tennessee in that manner set forth in hereinabove paragraph 118 and as further detailed in footnote [1] and paragraph E-118 (together with corresponding footnote [133] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; were joined therein that 'conspiracy' and 'final overt acts' in the furtherance thereof by Defendant Goodwine on April 13, 2000, in the manner set forth in hereinabove paragraph 118 and as further detailed in footnote [1] and paragraph E-118 (together with corresponding footnote [133] thereto) of Akers' 'MEMORANDUM & MEMORANDUM OF LAW' as filed contemporaneously herewith; and which 'final overt acts' in furtherance of that 'conspiracy' as detailed in hereinabove 'COUNT ONE', and 'chain conspiracy' detailed in hereinabove 'COUNTS TWO, THREE, FOUR, & TWELVE'; further enhanced injuries to Akers in his person and property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof; all in further violation of Title 42 U.S.C. §§ 1983 and 1985(3), ***inter alia***.

COUNT TWENTY-THREE - FINAL COVER-UP

150. On, or about, May 19, 2000, in Fayette County, Kentucky, Defendants Bishop, Red Corn, and Overstreet, ***inter alia***, conspired to covertly 'conceal' those 'conspiracies' and 'chain conspiracies' as detailed in hereinabove 'COUNTS ONE, TWO, THREE, & FOUR'; and 'overt acts' in furtherance thereof as detailed in 'COUNTS FIVE, SIX through TEN, & THIRTEEN'; and 'unlawful imprisonment' of Akers detailed in hereinabove 'COUNTS ELEVEN & FOURTEEN'; and those 'R.I.C.O. Violations'...

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detailed in hereinabove 'COUNTS FIFTEEN thru TWENTY-ONE', in the manner as detailed in hereinabove paragraph 121 through 124 and further detailed in paragraphs E-121 through E-124 (with correspondingly referenced footnotes [135] & [136] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which additional 'overt acts' further enhanced injuries to Akers in his person, property, and businesses as detailed in hereinabove paragraphs 126 & 127; all in further violation of Title 42 U.S.C. §§ 1983 and 1985(3), ***inter alia***." [D.E. #1, pages 96 - 123]

In view of the foregoing, **it is <u>absolutely incomprehensible</u> for <u>any Court</u>** to conclude that Akers can receive a fair adjudication of this case **<u>in any Court</u>** within the Commonwealth of Kentucky and/or that **the "ends of justice" <u>require</u>** Akers to **<u>ever</u>** return to **<u>any jurisdiction</u>** within the Commonwealth of Kentucky – thereby placing himself in peril of **"<u>more of the same</u>" tyranny and oppression** of/by the herein Defendants in violation of **TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3), *inter alia***.

ARGUMENT(S)

ARGUMENT I: **VENUE PROPERLY LIES WITH UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE - NASHVILLE DIVISION**

The District Court asserts that:

> "...the only events alleged to have occurred in [the U. S. District of Middle Tennessee] are some telephone calls to and from [Akers] and his former wife, Defendant Carolyn Bishop, in Lexington, Kentucky, which may have violated a protective order and formed the basis for contempt charges, and [Akers] extradition on October 1995 from Tennessee to Kentucky after his arrest. All other events alleged in the Complaint occurred in the Eastern District of Kentucky, including the events that led to his arrests, his trial in state court, sentence, and incarceration. Therefore, based upon the record before the Court, the Court concludes that 'a substantial part of the events or omissions giving rise to the claim[s] occurred' in the Eastern District of Kentucky. Only a few tangential acts/events are alleged to have occurred in the Middle District of Tennessee. Consequently, the Court finds that venue does not lie in [the U. S. District of Middle Tennessee] under 28 U.S.C. § 1391(b)(2)." [D.E. #79, page 3, lines 2 thru 17, clarification added]

Obviously, the District Court has misconstrued the facts - perhaps in the same manner as did the Hon. Henry R. Wilhoit, Chief Judge of the United States District Court for the Eastern District of Kentucky -- due to acceptance of the Defendants'-Appellees' fraudulent misrepresentations. [see, e.g., D.E. #78 at FN6, page 8 thereof]

At the time Akers migrated back to Tennessee on September 23, 1994, there were no charges against him whatsoever within Kentucky **or elsewhere**. [see "EXHIBIT 'V'",

D.E. #3] and none could have reasonably been anticipated. All the subsequent "criminal charges" were the direct result of interstate "events", the effect and results of which were extortion, blackmail, kidnapping and/or fraudulent extradition of Akers **within the State of Tennessee** for the express purposes of the Defendants'-Appellants' violations of Akers' privileges and immunities as secured by the United States Constitution; and for which remedies are provided for pursuant to provisions of TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3) - precisely as Akers has proceeded to do as encouraged by the Congressional purpose set out in "TITLE 42 U.S.C. § 1988(a) Applicability of statutory and common law",[3] i.e.,

> "The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in their civil rights, and for their vindication, shall be

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[3] See also: **Collins v. Chandler Unified School Dist., C.A.9 (Ariz.) 1981, 644 F.2d 759, certiorari denied 102 S.Ct. 322, 454 U.S. 863, 70 L.Ed. 2d 163**, i.e., "This section is broad and unequivocal and must be liberally construed to achieve congressional purpose of encouraging compliance with and enforcement of civil rights laws."; **Dennis v. Chang, C.A.9 (Hawaii) 1980, 611 F.2d 1302**, i.e., "This section must be liberally construed to achieve congressional purpose to encourage compliance with and enforcement of civil rights laws."; **Donaldson v. O'Connor, N.D.Fla 1978, 454 F.Supp. 311**, i.e., "This section is to be construed to fulfill congressional purpose of encouraging private litigation to enforce civil rights"; & **Johnson v. Summer, N.D. Miss.1980, 488 F.Supp. 83**, i.e., "This section, providing for attorney fees in civil cases, is to be broadly and liberally construed to achieve its intended purpose to compensate counsel who represents prevailing litigants on civil rights claims and to encourage individuals to seek judicial relief, particularly those who might not otherwise attempt to vindicate their rights, and **this is particularly true where individual is faced with opposition from state, with entire resources of state government supporting litigation**." (emphasis added)

> exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect;"

The District Court **completely misses the point** that the events which occurred within the Federal District of Middle Tennessee were not "tangential" but, rather, **were pivotal to all those subsequent events occurring in the Federal District of Eastern Kentucky**.

The District Court further asserts that:

> "The only Defendant who resides, is found, has an agent, or conducts his affairs in [the U. S. District of Middle Tennessee] is Ernest Williams"; and that: "[a]pparently, [Akers] does not dispute that venue cannot lie in [the U. S. District of Middle Tennessee] as to his RICO claims against the other defendants based on 18 U.S.C. § 1965(a). Giving Plaintiff's allegations the liberal construction afforded pro se litigants, however, [Akers] maintains that venue exists here as to the remaining Defendants pursuant to 18 U.S.C. § 1965(b). As expressly stated in the statute, before a district court can summons parties from another district to answer a RICO claim, it must find that 'the ends of justice' so require. What is required to meet the 'ends of justice' requirement is not crystal clear, but, at a minimum, the Court must determine that there is no other district which has personal jurisdiction and venue over all members of the alleged RICO conspiracy" [D.E. #79, page 4, lines 2 thru 16, emphasis added]. Again, the Court errs.

Akers certainly does "dispute that venue cannot lie in [the U. S. District of Middle Tennessee] as to his RICO claims against the other defendants" and relies upon the very same TITLE 18 U.S.C. § 1965(b)[4] which the Court cites as the basis therefor. Moreover, Defendant-Appellee Allen I. Rushing resides in Pennsylvania and **there is no "other district which**

has personal jurisdiction and venue over all members of the alleged RICO conspiracy". It just cannot be disputed that the United States District Court for the Middle District of Tennessee

---

[4] "The Second Circuit, in discussing an assertion of personal jurisdiction based upon 18 U.S.C. § 1965(b), stated as follows: 'This jurisdiction is not automatic but requires a showing that 'the ends of justice' so require. **There is no impediment to prosecution of a civil RICO action in a court foreign to some defendants if it is necessary...**" (citing **PT United Can Co. v. Crown Cork & Seal Co., Inc., 138 F.3d 65, 71-72 (2d Cir. 1998)**) [D.E. #79, page 5, lines 1 thru 14, emphasis added]

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at Nashville is the only proper venue for Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)".[5]

ARGUMENT II: "ORDER" TRANSFERRING VENUE FOR CASE TO EASTERN DISTRICT OF KENTUCKY IS "COLLATERAL TO THE MERITS" OF CASE

Inasmuch as those factual allegations contained within the hereinabove "STATEMENT OF FACTS (SUMMARY STATEMENT)" [supra, pages 8 through 22 hereof] will speak for themselves and it is not anticipated that even the Defendants-Appellees will contest this issue, Akers will not waste valuable time and effort in addressing it further. Suffice it to say that the District Court's "ORDER" is "collateral to the merits" of this case.

ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE TO AKERS

The list of "lay witnesses" required by Akers' at trial of this case will include residents of four (4) separate and distinct Federal Districts within Kentucky; two (2) separate and distinct Federal Districts within Tennessee; and two (2) separate and distinct Federal Districts within Indiana. All "expert witnesses" required by Akers' at trial are residents of the Federal District of Middle Tennessee. Fearing reprisal by the herein Defendants-Appellees as does Akers, all "lay...

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[5] See also: **Cooper v. Molko, D.C.Cal., 512 FR.Supp. 563 (1981)**, i.e., "In action by member of religious group against his parents, **venue was proper in Northern District of California where complaint alleged that parents came that district, participated in conspiracy** to abduct their son, and held him in motel in district for five days for deprogramming" (emphasis added); & **Jones v. Bales, D.C.Ga. 58 F.R.D. 453, affirmed 480 F.3d (1972)**, i.e. "**Where action is based on an alleged conspiracy within this section** relating to conspiracies for purpose of depriving any class of persons of equal protection of the laws, **the action may be brought in the district where any overt act occurred.**" (emphasis added)

..witnesses" who are residents of Kentucky and Indiana have made it clear that they prefer to testify in the Federal District of Middle Tennessee, at Nashville, and arrange for travel and/or per diem costs at their own expense. The yet undetermined number of lay witnesses who are residents of Middle Tennessee, and the only witnesses who can provide proof as to the "whereabouts" and "demeanor" of Akers during the time period encompassing his fraudulent "First Degree Stalking" conviction, cannot be required to travel in excess of one hundred (100) miles from the venue and it would be unfeasible for the U. S. District Court for the Eastern District of Kentucky to compel their appearance in Lexington, Kentucky. All nine (9) of Akers' expert witnesses are residents, and maintain offices in Middle Tennessee. Akers just, simply, no longer have the resources to compensate those expert witnesses for travel time, travel expense, and per diem expenses required for testimony in U. S.

District Court for the Eastern District of Kentucky at Lexington and there are no expert witnesses within Central Kentucky who can competently testify with respect to the issues raised in Akers' claims. Moreover, **every witness conceivably required by the herein Defendants-Appellees have already testified with respect to every conceivable matter** in Akers' numerous trials and/or hearings within Fayette [Kentucky] District & Circuit Courts. All such testimony is mechanically- recorded on audiotapes and/or videotapes and can be utilized by the Defendants-Appellees, to whatever extent relevant and admissible, pursuant to Rule 804 of the Federal Rules of Evidence. **Akers has no such luxury**.

This Honorable Court is asked to consider the following likely scenario in the event the "ORDER" of transfer issued by United States District Court for the Middle District of Tennessee is allowed to stand:

> (a) Akers', who is not an attorney and can no longer afford an attorney after having all his resources depleted in defense of the fraudulent charges in Kentucky and subsequent...

> ...incarceration within Kentucky, is compelled to re-enter the jurisdiction of the Defendants-Appellees for filings, depositions, pre-trial hearings, and, ultimately, for trial;
>
> (b) The Defendants-Appellees, realizing that they are in a "no win" situation, file additional fraudulent charges against Akers pursuant to the outstanding, **albeit unconstitutional**, "Domestic Violence Order" as detailed in ¶ 118 of Akers' Complaint; corresponding ¶ E-118 of Akers Memorandum; & hereinabove "COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP" [supra, page 21 hereof];

(c) Akers is then, **yet again, unlawfully imprisoned** within Kentucky for "God only knows" how long;

(d) Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" is then, subsequently, "DISMISSED FOR FAILURE TO PROSECUTE"; &

(e) The Defendants-Appellees escape liability and exposure of corruption.

The herein Defendants-Appellees have committed equally-dastardly acts in May through July, 1994; October through December, 1995; and May, 1994, through July, 2000, and **not even the Federal Courts can guarantee that the Defendants will not do so again** in order to prevent this case from going forward - thereby avoiding exposure of the corruption within their ranks.

Truly, **the "ends of justice" require** venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" to remain in the United States District Court for the Middle District of Tennessee at Nashville.

ARGUMENT IV: ISSUES WITH RESPECT TO TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON "TOO IMPORTANT" TO "BE DEFERRED UNTIL THE WHOLE CASE IS ADJUDICATED"

Akers hereby re-states and reiterates the arguments as set forth within the hereinabove "ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY...

..AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE TO AKERS" the same as if set forth herein in their entirety.

ARGUMENT V: THE "ENDS OF JUSTICE" REQUIRE VENUE TO REMAIN IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

The District Court asserts that:

"Based upon the record, the Court finds that the 'ends of justice' do not require that the...defendants be haled before this court from other districts. First, the entire case can be litigated in the Eastern District of Kentucky. As noted previously, venue is proper in that district and said District Court has personal jurisdiction over every Defendant under Section 1965. More specifically, ...Defendant Williams who lives in Franklin, Tennessee, represented [Akers] in [the Eastern District of Kentucky] during his trial there.[6] See Int'l Shoe Co. v. Washington, 326 U. S. 310, 316 (1945)", i.e.,

> '...personal jurisdiction requires 'certain minimum contacts' with the forum state and 'that the maintenance of the suit...does not offend traditional notions of fair play and substantial justice.'

Based upon the facts and circumstances of this case, the Court finds that justice does not require that this case be litigated [in the U. S. District of Middle Tennessee]." [D.E. #79, page 6, lines 1 thru 3, emphasis added]

In response, Akers hereby re-states and reiterates the arguments as set forth within the hereinabove "ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE

TO AKERS" the same as if set forth herein in their entirety. Additionally, Akers would point out that he has...

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[6] **This assertion is just, simply, false** and is apparently the product of the fraudulent misrepresentations of herein defense counsels, Robert L. Estes [see D.E. #35, page 7, lines 12 - 14] and Kentucky Assistant Attorney General D. Brent Irvin [see D.E. #38, ¶ 5, lines 1 - 3; & D.E. #39, page 11, lines 12 - 14]. Williams was retained by Akers for the **limited purpose as detailed in ¶ 106 of Akers' Complaint & ¶ E-106 of Akers' Memorandum**. Williams has **never filed an "Entry of Appearance" on behalf of Akers**; Williams **has never appeared in any Court proceeding on behalf of Akers**; nor has Williams **ever represented Akers in any "trial".**

..made repeated efforts within his various pleadings within the United States District Court for the Middle District of Tennessee, at Nashville, to alert that Court of the ominous perils to Akers if **ever returning to anywhere** within the jurisdiction of the herein Defendants-Appellees, e.g.,

> "The Kentucky Defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the Defendants, thereby subjecting him to "more of the same" oppression and tyranny which gave rise to Akers' claims herein and to facilitate additional violations of Title 18 U.S.C. § 1961, ***et seq.***, and Title 42 U.S.C. §§ 1983 & 1985 by those Defendants [see, e.g., D.E. #78 at ¶ 2(B)(I)(iii), page 5; & D.E. #75 at ¶ 1(A)(iv), page 18]

CONCLUSION

Finally, the District Court asserts as follows:

"...even if the Court permitted Plaintiff to litigate the RICO claims [in the U. S. District of Middle Tennessee] venue would still be improper as to [Akers'] Section 1983 and Section 1985 claims because a substantial part of the events giving rise to [Akers'] claims did not occur in [the U. S. District of Middle Tennessee][7] (28 U.S.C. § 1391(b)(2)) and Title 18 U.S.C. § 1965(a) applies only to the RICO claims; not the Section 1983/Section 1985 claims. Such a course of action would not promote judicial economy and would delay and add additional hardships to the parties.[8] Therefore, for the reasons stated, the Court concludes that venue does not properly lie in [the U. S. District of Middle Tennessee] for [Akers'] RICO claims." [D.E. #79, page 6, lines 4 thru 17, emphasis added]

"For the foregoing reasons, Defendants' Motions to Transfer will be GRANTED, and this case will be TRANSFERRED to the United States District Court for the Eastern District of Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT. ¶ An appropriate order will be entered." [D.E. #79, page 7, lines 5 thru 9, emphasis added]

Clearly, Akers recognizes that the herein case of "JAMES G. AKERS v. CAROLYN P. BISHOP, ***et al***" is a "hot potato" which no one wishes to even pick up – much less hold onto and

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[7] Once again, the Court errs [see hereinabove FN5, supra, page 25 hereof].

[8] **It is <u>astounding</u> that the District Court would now be concerned about "hardships" to the herein Defendants-Appellees in view of the history of this case, <u>with no regard</u> to <u>further hardships</u> upon Akers and his <u>witnesses</u>.**

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deal with. Nonetheless, **that is <u>precisely</u> what the Constitution and Laws of the United States of America <u>require</u>**. That is all Akers is asking the Federal Courts to do in this case – **to enforce**

the Constitution and Laws of the United States of America and allow "due process of law" to follow its designed course.

WHEREFORE, the Plaintiff-Appellant, James G. Akers, **without counsel**, asks and prays of this Honorable Court to reverse the "ORDER" granting transfer of this action to the United States District Court for the Eastern District of Kentucky, at Lexington, as entered on September 18, 2001, by the Honorable Robert L. Echols, Chief Judge for the United States District for the Middle District of Tennessee - Nashville Division, and remand with instructions that "venue" shall remain therein in order that the "ends of justice" may be effectively served.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellant
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024
TELEPHONE: 615/834-2843

* * * * * * * * * * * * * * * * *

CERTIFICATION OF COMPLIANCE

COMES THE PLAINTIFF-APPELLANT, James G. Akers, and hereby certifies that the foregoing "FINAL BRIEF FOR APPELLANT" fully complies with FRAP 32(a)(7)(C).

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellant

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP, et al, Defendants-Appellees.**"; (2) I am a citizen of the United States of America and the State of Tennessee therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Appellant, James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "**FINAL BRIEF FOR APPELLANT**" pursuant to **6 CIR. R. 28(a); 6 CIR. R 31(a); & FRAP 32(a), (b)**, via "**UNITED STATES MAIL-FIRST CLASS**", postage pre-paid, upon the Defendants-Appellees named therein and/or their legal counsel in that manner as follows: **(Listing of served Parties and/or respective Counsel-of-Record omitted from instant Petition for Writ of Certiorari. See official record for listings.)**

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 11th day of February, 2002,* has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, State-at-large
My Commission Expires: 3/26/2005

[END OF DOCUMENT]

FILED
DEC 26 2001
LEONARD GREEN, Clerk

C.O.A. CASE NUMBER: 01-6243
IN THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

JAMES G. AKERS,	)
	)
Plaintiff-Appellant,	) **RESPONSE AND**
	) **OBJECTIONS TO:**
	) MOTION [OF APPELLEES
	) PAMELA MILLER AND
v.	) LEXINGTON-FAYETTE
	) URBAN COUNTY
	) GOVERNMENT] TO
	) DISMISS AND [THE
	) ACCOMPANYING] MOTION
	) TO STAY PROCEEDINGS
CAROLYN P. BISHOP; et al,	) PENDING MOTIONS TO
	) DISMISS
Defendants-Appellees.)	

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE - NASHVILLE DIVISION

COMES THE PLAINTIFF-APPELLANT, James G. Akers (hereinafter "Akers'), **without counsel**, and, in strict accordance with Title 28 U.S.C. § 1654 in conjunction with Rule 26 and U.S.C.A.6 Combined Rule 27(e) of the Federal Rules of Appellate Procedure, files with this Honorable Court the hereinafter "**RESPONSE**" to the "NOTICE OF ADOPTION OF APPELLEES' MOTIONS TO DISMISS; MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTION TO DISMISS AND MOTION TO STAY FURTHER

PROCEEDINGS PENDING MOTIONS TO DISMISS" as served by Defendant-Appellee Pamela Miller (hereinafter "Miller") and/or the Lexington-Fayette Urban County Government (hereinafter "LFUCG") on December 11, 2001, and received by Akers at Post Office Box 3648; Brentwood, Tennessee 37024 on December 13, 2001.

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1. In her latest desperate attempt to escape her formidable liabilities as detailed in Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle District of Tennessee, Nashville Division, on November 21, 2000, the Defendant-Appellee Pamela Miller:

> (A) Appears to now fraudulently enjoin the Lexington-Fayette Urban County Government (LFUCG) in this civil action and appeal ***sub judice*** [page 1, ¶ 1];
>
> (B) "Concurs with the motions" and "adopts the pleadings" as previously filed herein by Appellees Katherine Witt, John J. Vaughan, M.D., Allen I. Rushing, Doris Fleming, Todd M. Layne, & Donald Shannon [page 1, ¶ 2, lines 1 thru 4];
>
> (C) "Concurs", "adopts", and incorporates the same "as if fully set forth [therein]" an unidentified "motion to stay further proceedings pending motions to dismiss and to stay filing of briefs pending the motions to dismiss" [page 1, ¶ 2, lines 4 thru 7]; &
>
> (D) "Requests that the appeal of the Appellant, James G. Akers, be dismissed and that further proceedings be stayed until disposition on the motions to dismiss and to any and all other relief to which the Appellee is entitled" [page 1, ¶ 3].

2. In response, Akers hereby re-states, reiterates, and supplements his responses with respect thereto as follows:

On November 21, 2000, Akers filed and served his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" together

with an extensive and contemporaneously- filed "MEMORANDUM & MEMORANDUM OF LAW" and "APPENDIX/ RELEVANT EXHIBITS" in support thereof (hereinafter "Akers' Complaint", "Akers' Memorandum", & "Akers' Appendix", respectively) [D.E. #1, 2 & 3, respectively],

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in the United States District Court for the Middle District of Tennessee, Nashville Division, in which Akers asserted that, ***inter alia***, beginning in about mid-July, 1993, and continuing through July 7, 2000:

> (a) The named Defendants-Appellees engaged in various "conspiracies" and/or "chain conspiracies" in violation of TITLE 42 U.S.C. § 1985 [see Akers' "BRIEF FOR APPELLANT" filed herein on November 13, 2001, ***viz***, "COUNT ONE" through "COUNT FOUR", pages 8 through 11; "COUNT TWELVE", page 13; & "COUNT TWENTY-THREE, page 22, for enumerations] **and, in the furtherance and concealment thereof;**
>
> (b) The named Defendants-Appellees committed numerous specific "overt acts" in violation of TITLE 42 U.S.C. § 1983 [see Akers' "BRIEF FOR APPELLANT" filed herein on November 13, 2001, ***viz***, "COUNT FIVE" through "COUNT ELEVEN", pages 11 through 13; "COUNT THIRTEEN" & "COUNT FOURTEEN", page 14; and "COUNT TWENTY-TWO" & "COUNT TWENTY-THREE", pages 21 & 22 for enumerations] **and, in the course thereof;**
>
> (c) The named Defendants-Appellees committed numerous predicate acts in violation of TITLE 18 U.S.C. § 1961, ***et seq.***, as are all detailed within Akers' Complaint and Memorandum in support [see Akers' "BRIEF FOR APPELLANT" filed herein on November 13, 2001, ***viz***, "COUNT FIFTEEN" through "COUNT TWENTY-ONE", pages 8 through 11, for enumerations].

(d) With the exception of Defendant-Appellee Vaughan's denial that "he was a party to any alleged conspiracy [or] engaged in any unlawful conduct" [see D.E. #51 at ¶ II(B)(1), page 2, lines 6 & 7]; Defendant-

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Appellee Kelly's denial that he has had any contact with Akers since September 23, 1994 [see D.E. #76, page 2, lines 8 & 9]; & Defendant-Appellee Bishop's denial of "the substantive allegations against her with the exception of any items which appear of public record" [see D.E. #83 at ¶ 3],[1] **not <u>even a single</u> Defendant-Appellee** has attempted to controvert **<u>even a single</u> averment** contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" inasmuch as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes and the Defendants-Appellees **<u>cannot deny the allegations against them</u>** without **subjecting themselves to still further sanctions and/or penalties under Federal Law**.

On September 18, 2001, the Honorable Robert L. Echols, Chief Judge for the United States District for the Middle District of Tennessee at Nashville, entered his "ORDER" denying the Defendants' various "MOTION[S] TO DISMISS" but granting transfer of this action to the United States District Court for the Eastern District of Kentucky at Lexington [D.E. #80 and accompanying "MEMORANDUM", D.E. #79].

As a matter of right, Akers appealed pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with the "Collateral Order Doctrine" as set out in **<u>Cohen v. Beneficial Loan Corp.</u>, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**, in which the United States Supreme Court held that "...**certain orders <u>were immediately</u>**

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[1] Even so, the remaining factual allegations would likely be sufficient to obtain a "Summary Judgement" against these Defendants-Appellees - **notwithstanding the fraudulent misrepresentations contained within their said pleadings.** [see D.E. #68, D.E. #69, & D.E. #78, respectively]

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appealable (1) if they were **collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage to the party seeking review;** and (3) if the issue raised was "**too important**" to "**be deferred until the whole case is adjudicated.**"[2]

The Defendants-Appellees do not have meritorious defenses to Akers' claims or appeal and, if they did, they should have presented those in accordance with the "Briefing Schedule" as set by this Honorable Court pursuant to Rule 31 of the Federal Rules of Appellate Procedure or, otherwise, now prepare for trial and allow "due process of law" to follow its designed course.

In specifically the same hereinabove order as Defendant-Appellee Miller's pleadings, Akers further responds as follows:

> (A) In Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle District of Tennessee, at Nashville, on November 21, 2000, "it is obvious that Akers has not named either the Lexington-Fayette [Kentucky] Urban County Government or the innocent taxpayers thereof or the Defendant Miller in her official capacity. The fact that Defendant Miller has committed unconstitutional and otherwise unlawful acts in her

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[2] See also, e.g., **Firestone Tire & Rubber Co. v. Risjord, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)**, i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, the order...is appealable under § 1291 **only if it falls within the *Cohen* doctrine.**" (emphasis added); **Abney v. United States, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)** at FN4, i.e., "Of course, Cohen's **collateral-order exception**

is equally applicable in both civil and criminal proceedings." (emphasis added); and **Armstrong v. McAlpin, 625 F.2d 433, C.A.N.Y. (1980)**, citing **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)** in which the Supreme Court held that "...certain orders were **immediately appealable** (1) if they were collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until the whole case is adjudicated."

'private capacity' which resulted in specific acts in the furtherance thereof by other persons acting in their individual 'official capacities', **without jurisdiction**, and/or other 'persons' in a purely private capacity, does not relieve Miller of her liabilities as a 'person' under Title 18 U.S.C. §§2, 3, 4, 5, 1964(c); Title 42 U.S.C. §§ 1983 & 1985(3); and those other related statutory provisions cited in Akers' Memorandum" [see, e.g., D.E. #46 at ¶ 4, page 4, line 25, through page 5, line 10]. However, inasmuch as Miller and her purported counsels, Edward W. Gardner (previous Director of Litigation for LFUCG) and Theresa L. Holmes (current "Acting Director" of Litigation for LFUCG) have thus far chosen to misappropriate and/or misuse revenues collected from innocent taxpayers of Fayette County, Kentucky, for the illicit purpose of defending Miller for **unlawful acts committed in her private capacity**, Akers has no objection if those innocent taxpayers themselves do not. An "Amended Complaint" will be tendered accordingly.

(B) Miller "concurs with the motions" and "adopts the pleadings" as previously filed herein by Appellees Katherine Witt, John J. Vaughan, M.D., Allen I. Rushing, Doris Fleming, Todd M. Layne, & Donald Shannon. In the same chronological order in which those "motions"/"pleadings" and Akers' "responses" thereto were served, Akers re-states and reiterates his responses thereto as follows:

(i) On October 23, 2001, Defendant-Appellee Jerry L. Kelly filed and served his

"MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS APPEAL FOR LACK OF JURISDICTION", asserting that Akers' hereinabove...

...appeal should be dismissed in that it was not pursuant to a "final order" and should be dismissed pursuant to Title 28 U.S.C. § 1291. [see "EXHIBIT 'CA6-02'", page 6 of 8, Item #6]

(ii) On October 30, 2001, Plaintiff-Appellant Akers served his "RESPONSE TO: 'MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS APPEAL FOR LACK OF JURISDICTION'", pointing out that Kelly misapprehended Title 28 U.S.C. § 1291 and the "treatise" set forth in 17 Moore's Federal Practice § 111.60[1] in context with the "Collateral Order Doctrine" as set out in **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**. [see "CA6-02'", page 6 of 8, Item #10]

(iii) On November 6, 2001, Defendant-Appellee Katherine H. Witt served her "MOTION TO DISMISS APPEAL/REPLY TO RESPONSE OF AKERS", echoing Kentucky Assistant Attorney General D. Brent Irvin's citation of this Honorable Court's "unpublished decision" in **BLUE ASH DEVELOPMENT, INC., and Royalton Resources, Inc. Plaintiffs-Appellants, v. Susan E POLAN, Basil A. Diamond, and Susan I. Murray, Defendants-Appellees, 74 F.3d 1240, 1996 WL 1828 (6th CIR.(Ky))** as, substantially, the grounds therefor. [see "EXHIBIT 'CA6-02'", page 6 of 8, Item #14]

(iv) As well on November 6, 2001, Defendant-Appellee Doris Fleming served her

"MOTION OF APPELLEE, DORIS FLEMING, TO DISMISS APPEAL FOR LACK OF JURISDICTION" [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #2] based upon virtually-identical grounds as those asserted by...

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...Defendant-Appellee Katherine H. Witt in her hereinabove "MOTION TO DISMISS APPEAL/ REPLY TO RESPONSE OF AKERS" and Kentucky Assistant Attorney General D. Brent Irvin's hereinabove "MOTION OF STATE APPELLEES TO DISMISS APPEAL FOR LACK OF JURISDICTION". [see "EXHIBIT 'CA6-02'", page 6 of 8, Item #12]

(v) On November 10, 2001, Plaintiff-Appellant James G. Akers served his "RESPONSE TO: 'MOTION OF [Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz] TO DISMISS APPEAL FOR LACK OF JURISDICTION'", pointing out that the "State" Defendants-Appellees and their purported counsel, Kentucky Assistant Attorney General D. Brent Irvin, had both misconstrued and misapplied this Honorable Court's "unpublished decision" in **BLUE ASH DEVELOPMENT, INC., and Royalton Resources, Inc. Plaintiffs-Appellants, v. Susan E POLAN, Basil A. Diamond, and Susan I. Murray, Defendants-Appellees, 74 F.3d 1240, 1996 WL 1828 (6th CIR.(Ky))** as the asserted the grounds therefor in context with the "Collateral Order Doctrine" as set out in **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed.**

1528 (1949). [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #5]

(vi) As required by [the] "BRIEFING SCHEDULE" issued by the Court on October 16, 2001, **together with Rule 31 of the Federal Rules of Appellate Procedure**, on November 12, 2001, Appellant Akers served his "BRIEF FOR

APPELLANT" which contained indisputable arguments and authorities in support thereof with respect to the issue of whether his herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" must remain in the United States District Court for the Middle District of Tennessee, Nashville Division. [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #6]

(vii) Thereafter, the Defendants-Appellees Todd M. Layne and Donald Shannon served an **undated** "MOTION OF APPELLEES, TODD M. LAYNE AND DONALD SHANNON, TO DISMISS APPEAL FOR LACK OF JURISDICTION" [see "CA6-02'", page 7 of 8, Item #8] **in identical manner – even with respect to the very same clerical errors**, ***viz***, "28 U.S.C. § 406" & "28 U.S.C. § 291" - further "echoing" the arguments set out in the "MOTION TO DISMISS APPEAL/REPLY TO RESPONSE OF AKERS" of Defendant-Appellee Katherine H. Witt and the same was received by Akers at Post Office Box 3648; Brentwood, Tennessee 37024 on November 19, 2001.

(viii) On November 16, 2001, Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz, by

and through their purported counsel, Kentucky Assistant Attorney General D. Brent Irvin, served their "...MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTIONS TO DISMISS", again asserting defenses of "judicial and prosecutorial immunities" and arguing that "judicial economy will be served"..."if they are not burdened with

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responding to a frivolous appeal on the merits if this Court agrees it lacks jurisdiction over the appeal in the first place". **Inexplicably, this "motion" was not entered on this Court's Docket until 11/27/01**. [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #12]

(ix) On November 19, 2001, Defendants-Appellees John J. Vaughan, M.D., and Allen I. Rushing served their "MOTION OF APPELLEES JOHN J. VAUGHAN, M.D., AND ALLEN I. RUSHING TO DISMISS APPEAL", asserting that Akers' hereinabove appeal should be dismissed pursuant to Title 28 U.S.C. § 1291 and classifying Akers' herein appeal as, essentially, "[a petition for] an extraordinary writ". [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #10]

(x) On November 26, 2001, Akers timely served his "RESPONSE & OBJECTIONS TO: "[Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz] MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTIONS TO DISMISS" **in strict accordance with Rules 26 & 6 CIR. R. 27(e)(2) of the Federal Rules of Appellate Procedure**, specifically addressing, responding to and "OBJECTING" to

all those theretofore issues raised in the Defendants-Appellees' various motions with respect to the dismissal of Akers' herein appeal and/or various motions to stay the briefing schedule pending disposition of motions to dismiss. [see "EXHIBIT CA6-05'" appended hereto]

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(xi) On November 27, 2001, Deputy Clerk of the United States Court of Appeals for the Sixth Circuit, Diane Schnur, issued her "letter/order/directive" placing the "Briefing Schedule" as previously issued by the Court "in abeyance pending the disposition of ...Appellee's motion to dismiss for lack of jurisdiction"; to which,

(xii) Akers timely served his "MOTION FOR RECONSIDERATION" on December 7, 2001,[3] in which all theretofore issues raised by the Defendants-Appellees were specifically and extensively addressed in the form of "responses" and/or objections thereto and pointing out to this Honorable Court that the herein Defendants-Appellees are engaged in what can only be fairly termed as "delay tactics" utilizing nothing more than the strategies of confusion and delay.

(xiii) Kentucky's Assistant Attorney General, D. Brent Irvin has already signaled his intent to continue to thwart the "due process" sought by Akers in this civil action by way of Irvin's threat, *viz*, "[t]he State Defendants will renew their motion to dismiss this case after the remand" [see "EXHIBIT 'CA6-06'", page 2, lines 18 & 19]. Apparently, the conspiracies alleged in Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. §

1983; & TITLE 42 U.S.C. § 1985(3)" filed in United States District Court for the Middle District of Tennessee, Nashville Division, on November 21, 2000, ...

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[3] Akers hereby acknowledges that the "APPENDIX" included therewith was defective due to a mechanical malfunction of the copier utilized [see EXHIBIT 'CA6-02'", page 7 of 8, Item #10] . The herewith "APPENDIX" is intended to supersede, in its entirety, the "APPENDIX" served as an integral part of Akers' "MOTION FOR RECONSIDERATION" on December 7, 2001. Akers humbly apologizes to this Honorable Court and all parties for any inconvenience as the result thereof.

...continue unto this very day and it is now clear that **the Defendants-Appellees <u>will stop at nothing</u> to prevent or delay this case from proceeding - <u>without regard</u> for "judicial economy"; the First Amendment to the United States Constitution; any of the other Constitutional, Statutory, or Common Law provisions as cited within Akers' Complaint & Memorandum; <u>or any of the "authorities"</u> cited in support thereof**. Again, an "Amended Complaint" will be tendered accordingly by Akers.

(C) Defendant-Appellee Miller and/or the Lexington-Fayette Urban County Government "concurs", "adopts", and incorporates the same "as if fully set forth [therein]" an unidentified "motion to stay further proceedings pending motions to dismiss and to stay filing of briefs pending the motions to dismiss". It can only be presumed that they refer to the "motion" of Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz, by and

through their purported counsel, Kentucky Assistant Attorney General D. Brent Irvin, as detailed in hereinabove ¶ 2(B)(vii). **In response**, Akers hereby re-states and reiterates his responses thereto as detailed within his "RESPONSES & OBJECTIONS [THERETO]" as detailed in hereinabove ¶ 2(B)(ix).

(D) Defendant-Appellee Miller and/or the Lexington-Fayette Urban County Government "requests that the appeal of the Appellant, James G. Akers, be dismissed and that further proceedings be stayed until disposition on the motions to dismiss and to any and all other relief to which the Appellee is entitled" [page 1, ¶ 3]. **In response**, Akers hereby re-states, reiterates, and amends his response and objections thereto as follows:

(a) In essence, Defendant-Appellee Miller and/or the Lexington-Fayette Urban County Government, by and through their purported counsel, Acting Director of Litigation for the Lexington-Fayette [Kentucky] Urban County Government, Theresa L. Holmes, ask this Honorable Court to grant a continuance of the "Briefing Schedule" which has been set by this Honorable Court and which has already been complied with by Akers by means of his timely "BRIEF FOR APPELLANT", as properly served on November 12, 2001, and filed with the Court on November 13, 2001. As the bases for her "motion", Defendant-Appellee Miller:

(i) asserts that "[m]any of the named appellees...have filed potentially dispositive motions to dismiss the appeal on the ground that this Court lacks jurisdiction to consider an appeal from an interlocutory order transferring Akers' case from the United States District Court for the Middle District of Tennessee to the United States District Court for the Eastern District of Kentucky;

(ii) minimize that "[Akers] has responded to the "motions [to dismiss]", ...essentially arguing he cannot get a fair trial in Kentucky";

iii) argue that "judicial economy will be served if this Court stays the current briefing schedule until the Court rules on the pending motions to dismiss";

(iv) **again** argue that they have "absolute immunities and prosecutorial immunities from suit which shields them from defending Akers' underlying claims";

(v) label Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)"as a "frivolous but vexatious civil rights action"; &

(vi) assert that they should not be "burdened with responding...

...to a frivolous appeal on the merits if this Court agrees that it lacks jurisdiction over the appeal in the first place."

(b) **In the same hereinabove order** as the pleadings presented now by Miller in the same manner as previously presented by Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz, **Akers hereby responds and/or objects thereto** as follows:

(i) Indeed, "[m]any of the named appellees have filed [purportedly] dispositive motions to dismiss the appeal on the ground (sic) that this Court lacks jurisdiction to consider an appeal from an interlocutory order transferring Akers' case from the United States District Court for the Middle District of Tennessee to the United States District Court for the Eastern District of Kentucky" pursuant to provisions of Title 28 U.S.C. § 1291. However, Akers maintains that the Defendants-Appellees misapprehend Title 28 U.S.C. § 1291 in context

with the "Collateral Order Doctrine" as set forth in **Clemence v. Clemence, 8 Kan. App.2d 377, 658 P.2d 368 (1983)**, i.e., "'Collateral order' doctrine allows appeal from interlocutory order which conclusively determines issue completely separate from merits of action, and which cannot be given effective review on appeal from subsequent final judgement; such order is, for purposes of appellate jurisdiction, 'final order'"; **Firestone Tire & Rubber Co. v. Risjord, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)**, i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, the order is appealable under § 1291 **only if it falls within the *Cohen* doctrine**." (emphasis added); ...

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...**Abney v. United States, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)** at FN4, i.e., "Of course, Cohen's **collateral-order exception** is equally applicable in both civil and criminal proceedings." (emphasis added); and **Armstrong v. McAlpin, 625 F.2d 433, C.A.N.Y. (1980)**, citing **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)** in which the Supreme Court held that "...certain orders were **immediately appealable** (1) if they were collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until the whole case is adjudicated."

(ii) Consistent with their history of extracting minute and/or subordinate excerpts from the Constitution and Laws of the United States of America **as well as the** Constitution and Laws of the Commonwealth of Kentucky and, then, exacerbating the context thereof for their own convenience and/or exploitation, the Defendants-Appellees" minimize that "[Akers] has responded to the "motions [to dismiss]",

...essentially arguing he cannot get a fair trial in Kentucky". **The Appellees are only attempting to divert this Honorable Court's attention away from the real issues** as presented in ARGUMENT(S) III & V of Akers' "BRIEF FOR APPELLANT" as filed with the Court on November 13, 2001, i.e.:

"The list of "lay witnesses" required by Akers' at trial of this case will include residents of four (4) separate and distinct Federal Districts within Kentucky; two (2) separate and distinct Federal Districts within Tennessee; and two (2) separate and distinct Federal Districts within Indiana. All 'expert witnesses' required by Akers at trial are residents of the Federal District of Middle Tennessee. Fearing reprisal by the herein Defendants-Appellees as does Akers, all 'lay witnesses' who are residents of Kentucky and Indiana have made it clear that they prefer to testify in the Federal District of Middle...

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...Tennessee, at Nashville, and arrange for travel and/or per diem costs at their own expense. The yet undetermined number of lay witnesses who are residents of Middle Tennessee, and the only witnesses who can provide proof as to the 'whereabouts' and 'demeanor' of Akers during the time period encompassing his fraudulent 'First Degree Stalking' conviction, cannot be required to travel in excess of one hundred (100) miles from the venue and it would be unfeasible for the U. S. District Court for the Eastern District of Kentucky to compel their appearance in Lexington, Kentucky. All nine (9) of Akers' expert witnesses are residents, and maintain offices in Middle Tennessee. Akers just, simply, no longer [has] the resources to compensate those expert witnesses for travel time, travel expense, and per diem expenses required for testimony in U. S. District Court for the

Eastern District of Kentucky at Lexington and there are no expert witnesses within Central Kentucky who can competently testify with respect to the issues raised in Akers' claims. Moreover, every witness conceivably required by the Defendants-Appellants have already testified with respect to **every conceivable matter** in Akers' numerous trials and/or hearings within Fayette [Kentucky] District and Circuit Courts. All such testimony is mechanically-recorded audiotapes and/or videotapes and can be utilized, to the extent relevant and admissible, pursuant to Rule 804 of the Federal Rules of Evidence. Akers has no such luxury.

This Honorable Court is asked to consider the following likely scenario in the event the 'ORDER' of transfer issued by United States District Court for the Middle District of Tennessee is allowed to stand:

> (a) Akers', who is not an attorney and can no longer afford an attorney after having all his resources depleted in defense of the fraudulent charges in Kentucky and subsequent incarceration within Kentucky, is compelled to re-enter the jurisdiction of the herein Plaintiffs-Appell[ees] for filings, depositions, pre-trial hearings, and, ultimately, for trial;
>
> (b) The Defendants-Appellees, realizing that they are in a "no win" situation, file additional fraudulent charges against Akers pursuant to the outstanding, **albeit unconstitutional**, "Domestic Violence Order" as detailed in ¶ 118 of Akers' Complaint; corresponding ¶ E-118 of Akers Memorandum; & hereinabove "COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP" [supra, page 21 thereof];
>
> (c) Akers is then, **yet again, unlawfully imprisoned** within Kentucky for 'God only knows' how long;
>
> (d) Akers' herein 'CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c);

TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" is then, subsequently, "DISMISSED FOR FAILURE TO PROSECUTE'; &

(e) The herein Defendants-Appellees escape liability and exposure of corruption.

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The herein Defendants-Appellees have comitted equally-dastardly acts in May through July, 1994; October through December, 1995; and May, 1994, through July, 2000, and not even the Federal Courts can guarantee that those same Defendants-Appellees will fail to do so again in order to prevent this case from going forward – thereby avoiding exposure of the corruption within their ranks.

Truly, the 'ends of justice' require venue for Akers' 'CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)' to remain in the United States District Court for the Middle District of Tennessee at Nashville. ¶...Additionally, Akers would point out that he has made repeated efforts within his various pleadings within the United States District Court for the Middle District of Tennessee, at Nashville, to alert that Court of the ominous perils to Akers if **ever returning to anywhere** within the jurisdiction of the herein Defendants-Appell[ees], e.g.,

> 'The Kentucky Defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the Defendants, thereby subjecting him to 'more of the same' oppression and tyranny which gave rise to Akers' claims herein and to facilitate additional violations of Title 18 U.S.C. § 1961, ***et seq.***, and Title 42 U.S.C. §§ 1983 & 1985 by those

Defendants [see, e.g., D.E. #78 at ¶ 2(B)(I)(iii), page 5; & D.E. #75 at ¶ 1(A)(iv), page 18"; & "**BRIEF FOR APPELLANT**"at pages 26 - 29].

(iii) The Defendants-Appellees argue that "judicial economy will be served if this Court stays the current briefing schedule until the Court rules on the pending motions to dismiss". What the Defendants-Appellees are **really arguing is that they, themselves, would be "served if this Court stays the current briefing schedule until the Court rules on the pending motions to dismiss"** inasmuch as **they cannot tender a brief of their own** which provides any meritorious defenses or arguments in opposition to those issues contained within Akers' "BRIEF FOR APPELLANT", as served on November 12, 2001. Akers has already honored the "Briefing Schedule" as set by this Honorable Court; shall continue to do so; hereby "**OBJECTS**" to the Defendants' Appellees' request for any further delay in this appeal; and asserts that such a course of action as requested by...

...the Defendants-Appellees would be the equivalent of granting a "ceasefire" to the Al Qaeda – thereby allowing it to: (a) arrange for escape routes; (b) reassemble, resupply, & regroup in some unknown location; and, then, (c) plan and implement further terrorist attacks upon additional innocent victims.

(iv) The Defendants-Appellees **again have the audacity** to argue that the they have "absolute immunities and prosecutorial immunities from suit which shields them from defending Akers' underlying claims" – and **Akers' response is the same** as it was every other time the Defendants-Appellees have attempted to assert this ludicrous "defense", i.e.:

"On December 8, 2000, Kentucky's Assistant Attorney D. Brent Irvin (hereinafter "Irvin"), served his "MOTION TO BE PERMITTED TO PRACTICE IN THIS PARTICULAR CASE WITHOUT LOCAL COUNSEL". Irvin's said "Motion" particularly underscores the particular difficulties with which Akers has been faced from the very outset of his so-called "Domestic Relations" matters, i.e., **defending against the vast resources of the entire Commonwealth of Kentucky as applied to personal agendas of private individuals in their private capacities**. Irvin now seeks to shield Defendants Clark, Overstreet, Red Corn, Ferguson, and Swartz from their clearly unconstitutional and otherwise unlawful acts, by attempting to invoke Eleventh Amendment immunities and, thereby, allow them to hide behind the innocent taxpayers of Kentucky. In Akers' Complaint, it is obvious that Akers has not named either the Commonwealth of Kentucky **or** the innocent taxpayers of Kentucky **or** either of the Defendants who Irvin purports to represent in any of their respective official capacities. The mere fact that those said Defendants committed unconstitutional and otherwise unlawful acts in their "private capacities" and then committed specific acts in the furtherance thereof in their respective "official capacities", **without jurisdiction**, does not relieve them of their liabilities as "persons" under Title 18 U.S.C. §§ 2, 3, 4, 5, 1964(c); Title 42 U.S.C. §§ 1983 & 1985(3); and those other related statutory provisions cited in Akers' Memorandum. Moreover, it is doubtful that Irvin's representation of those Defendants he purports to represent is even permissible under the Constitution, laws, or regulations of the Commonwealth of Kentucky absent a public referendum specifically authorizing the same." [D.E. #46 at ¶ 2]

"It is preposterous for the herein defendants to assert that the Eleventh Amendment (or other provision) to the United States Constitution was ever intended to afford immunities for criminal acts or, indeed, **any other act** in direct violation or contravention thereof. Moreover, it is Akers' position that the fraudulent extradition and/or kidnapping of Akers from his home State of Tennessee effected a "constructive waiver" of sovereign immunities;[4] that the lack of "subject matter" and "personal" jurisdiction in so doing constituted an "absolute waiver" of sovereign immunities;[5] that representation of any of the herein defendants by the Attorney General's Office of the Commonwealth of Kentucky constitutes an "intentional and actual waiver" of sovereign immunities; and that the obvious elements of "fraud","conspiracy", and "malice", ***inter alia***, pervasive within the activities of the remaining defendants invalidates any claims of immunities by them.

A representative analogy would be:

> Parties B through Z conspire to and, in fact, carry out the criminal act of robbing Victim A. An integral part of the conspiracy of Parties B through Z is an agreement that, in order to prevent Victim A from filing criminal charges against them, Parties B through Z will devise, implement, and effectuate fraudulent criminal charges **against Victim A** so that; when Parties B through Z are called to and, in fact, do testify against Victim A in his criminal trial, Parties B through Z (who are the actual criminals in the overall matter)_acquire immunities from their testimony against Victim A; then assert a defense of "qualified immunity" against prosecution for "conspiracy" against and "robbery" of Victim A.[6]

Surely, the common law permits no such immunities for Parties B through Z. [D.E. #68 at ¶ (a)(2)(E); & D.E. #75 at ¶ (5)(V)(E)(i)]; &

"Defendant Kelly acknowledges that he is not entitled to any immunities in this action. However, to whatever extent he supports the arguments of any of his co-defendants respecting any such alleged immunities, Akers hereby responds that **neither are any of Kelly's co-defendants entitled to immunities** inasmuch as they have committed **unlawful acts** in their **private capacities** and, then, perpetuated those acts in their **official capacities, without "personal" or "subject matter" jurisdiction**. [see, e.g., **Robichaud v. Roman, C.A. 9 (Ariz.) 1965, 351 F.2d 533**, i.e., "Title of office, **quasi-judicial or even judicial**, does not of itself immunize officer from claim of damages under this [Title 42 U.S.C. § 1983] (emphasis added); **Henzel v. Gerstein, C.A. 5 (Fla.) 1979, 608 F2d 654**, i.e., "The 'absence of jurisdiction' exception to rule that a judge is absolutely immune from civil rights damage liability for acts within his judicial capacity, **except when he acts in absence of all jurisdiction**, refers to situations in which a judge acts **purely in a private capacity**" (emphasis added); and **Sparks v. Duval County Ranch Co., C.A.5 (Tex.) 1979, 604 F.2d 976, affirmed 101 S.Ct. 183 449 U.S. 24, 66 L.Ed. 2d 185**, i.e., "Rule of judicial immunity from damages, with a single bright-line exception, *viz.*, **a judge is not protected if he acts in 'clear absence of all jurisdiction'**, is as broad as, but no broader than, necessary." (emphasis added) [D.E. #78 at ¶ (2)(V)(i)]

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[4] See Akers' Complaint at ¶¶ 56 through 68, & ¶¶ 70 through 79; and parallel ¶¶ E-56 through E-68 together with FN66 through FN71 thereto, E-70 thru E-79 together with FN72 through FN75 thereto of accompanying Memorandum.

[5] See Akers' Memorandum at ¶ 81 together with FN81 & FN82 thereto.

[6] See Akers' Complaint at ¶¶ 2, 3(d) thru 3(g), 4(d), 5, 10(a) thru 10(w), 7 [(sic) - should be "11"], 12, 24, 31 thru 44, 47, 48 thru 50, 56, 58, 64, 65, 66, 68, 70 thru 89, 91, 96 through 104, 106 thru 112, 115, 117, 118, 121 thru 155, and "PRAYER(S) FOR RELIEF" of Akers' Complaint; and ¶¶ A-2, A-3, A-4, E-1, E-2, E-4 together with FN40 thereto, E-8, E-9, E-11, parallel ¶¶ E-12 together with FN41 thereto, E-24, E-31 thru E-44 together with FN44 through FN57

thereto, E-47 together with FN59 thereto, E-48 thru E-50 together with FN60 through FN62 thereto, E-56, E-54 together with FN65 thereto, E-56 together with FN66 thereto, E-58, E-64, E-65, E-66 together with FN70 & FN71 thereto, E-68, E-70 thru E-89 together with FN72 through FN95 thereto, E-91 together with FN97 thereto, E-96 through E-104 together with FN101 through FN105 thereto, E-106 through E-112 together with FN106 through FN127 thereto, E-115 with FN128 thereto, E-117 together with FN131 thereto, E-118 together with FN133 thereto, and E-121 through E-129 together with respective FN134 through FN136 thereto of Akers' Memorandum.

(v) The Defendants-Appellees label Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as a "frivolous but vexatious civil rights action". The term "frivolous" is defined as follows:

> "Of little weight or importance. **A pleading is 'frivolous' when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay** or to embarrass the opponent. **A** claim or **defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense**. Frivolous pleadings may be amended to proper form, or ordered stricken, under the federal and state Rules of Civil Procedure." [Black's Law Dictionary, Sixth Edition, 12th Reprint, 1998, emphasis added]

In view of the history of this case, Akers suggests that perhaps it is this Honorable Court who should decide whose pleadings have been "frivolous".

WHEREFORE, in view of the foregoing, the Plaintiff-Appellant, James G. Akers,, **without counsel**, will not ask that the "NOTICE OF ADOPTION OF APPELLEES' MOTIONS TO DISMISS; MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTION TO DISMISS AND MOTION TO STAY FURTHER PROCEEDINGS PENDING MOTIONS TO DISMISS" as served by Defendant-Appellee Pamela Miller (hereinafter "Miller") and/or the Lexington-Fayette Urban County Government (hereinafter "LFUCG") on December 11, 2001, be "STRICKEN" from the record as would clearly be warranted pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, but will simply ask and pray of this Honorable Court to "**DENY**" the same but allow it to remain an integral part of the Official Record on Appeal as an example of the manner in which the herein Defendants-Appellees have attempted to unduly burden the cost of this litigation while, at the same time, unconstitutionally deprive Akers of his rights and privileges provided for under, ***inter alia***, the First Amendment to the United States Constitution.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellee
Post Office Box 3648
Brentwood, Tennessee 37024
4708 Trousdale Drive
Nashville, Tennessee 37220
Telephone: 615/834-2843
Facsimile: 615/831-9307

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN**

P. BISHOP, et al, Defendants-Appellees."; (2) I am a **citizen** of the **United States of America** and the **State of Tennessee** therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "**RESPONSE**" to the "NOTICE OF ADOPTION OF APPELLEES' MOTIONS TO DISMISS; MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTION TO DISMISS AND MOTION TO STAY FURTHER PROCEEDINGS PENDING MOTIONS TO DISMISS" as served by Defendant-Appellee Pamela Miller (hereinafter "Miller") and/or the Lexington-Fayette Urban County Government (hereinafter "LFUCG") on December 11, 2001, via "**UNITED STATES MAIL-FIRST CLASS**", on legal counsel for the Defendants-Appellees as follows: **(Listing of served Parties and/or respective Counsel-of-Record omitted from instant Petition for Writ of Certiorari. See official record for listings.)**

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 21st day of December, 2001, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, State-at-large
My Commission Expires: 03/26/2005

INDEX OF EXHIBITS

Exhibit	Description:	Page Number: Apndx/Cumul
CA6-01	"Letter"/"Order"/"Directive" issued by Sixth Circuit Court of Appeals Clerk Diane Schnur on 11/16/2001	1 / 29
CA6-02	"General Docket", U.S. Court of Appeals for the Sixth Circuit, Case #01-6243, as of 12/18/2001	2 / 30
CA6-03	"Civil Docket", U.S. District Court for the Middle District of Tennessee (Nashville); Akers v. Bishop, et al; Case #00-CV-1142, as of 10/26/2001	10 / 38
CA6-04	"Briefing Schedule", U.S. Court of Appeals for the Sixth Circuit, Case #01-6243, issued 10/16/2001	21 / 49
CA6-05	Akers' "RESPONSE & OBJECTIONS TO: 'STATE APPELLEES' MOTION TO STAY BRIEFING SCHEDULE PENDING MOTIONS TO DISMISS" w/Transmittal & Postal Receipt, served 11/26/2001	25 / 52
CA6-06	"RESPONSE TO APPELLANT'S MOTION FOR RECONSIDERATION" served by Kentucky Asst. Atty. General, D. Brent Irvin, on 12/13/2001	41 / 67

[END OF DOCUMENT]

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN
SEP 21 2001

DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES G. AKERS, Plaintiff,	FILE NUMBER: 3:00-1142
v.	**NOTICE OF APPEAL**
CAROLYN P. BISHOP; *et al*, Defendants.	

NOTICE IS HEREBY GIVEN that the Plaintiff, James G.Akers, **without counsel**, in the above named case, hereby appeals to theUnited States Court of Appeals for the Sixth Circuit from the "ORDER" transferring the same to United States District Court for the Eastern District of Kentucky as entered in this action by Circuit Judge Robert L. Echols in the United States District Court for the Middle District of Tennessee, Nashville Division, on the 18th day of September, 2001.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843
Facsimile: 615/831-9307

CERTIFICATE OF GOOD FAITH

COMES THE PLAINTIFF, James G. Akers, **without counsel**, and hereby certifies that the hereinbefore "NOTICE OF APPEAL" is filed in good faith inasmuch as there are genuine issues of material fact which, pursuant to provisions of Constitutional and Statutory Laws of the United States of America coupled with applicable common law and principles of equity at law as are all sufficiently contained within the United States District Court for the Middle District of Tennessee records, preclude the transfer of the instant case to United States District Court for the Eastern District of Kentucky.

s/ James G. Akers
JAMES G. AKERS, Plaintiff
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843
Facsimile: 615/831-9307

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove James G. Akers has personally appeared before me on this, the 21st day of September, 2001, has acknowledged the foregoing, and subscribed his signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, State-at-large

My Commission Expires: 03/26/2005

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "JAMES G. AKERS, Plaintiff, V. CAROLYN P. BISHOP, et al, Defendants."; (2) I am a citizen of the United States of America and State of Tennessee therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true and complete copy of the foregoing "NOTICE OF APPEAL" together with the accompanying "CERTIFICATE OF GOOD FAITH" via "UNITED STATES MAIL-FIRST CLASS", postage prepaid, in the manner as follows: **(Listing of served Parties and/or respective Counsel of Record omitted from instant Petition for Writ of Certiorari. See official record for listings.)**

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 21st day of September, 2001, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, State-at-large
My Commission Expires: 03/26/2005

[END OF DOCUMENT]

FILED
NOV 1 2001
LEONARD GREEN, Clerk

C.O.A. CASE NUMBER: 01-6243
IN THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

JAMES G. AKERS, Plaintiff-Appellant,	)
v.	) APPELLANT'S RESPONSE) TO: MOTION OF APPELLEE,) JERRY L. KELLY, TO DISMISS
CAROLYN P. BISHOP; et al, Defendants-Appellees.	) APPEAL

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE - NASHVILLE DIVISION

COMES THE PLAINTIFF-APPELLANT, James G. Akers (hereinafter "Akers'), **without counsel**, and, in strict accordance with Title 28 U.S.C. § 1654 in conjunction with U.S.C.A.6 Combined Rule 27(e) of the Federal Rules of Appellate Procedure, files with this Honorable Court the hereinafter "**RESPONSE**" to the "MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS THE APPEAL FOR LACK OF JURISDICTION" as filed and served on October 23, 2001.

(1) In his latest desperate attempt to escape his formidable liabilities as detailed in Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle District of...

Tennessee, Nashville Division, on November 21, 2000,[1] the Defendant-Appellee Jerry L. Kelly (hereinafter "Kelly") purports that Akers' appeal to this Honorable Court should be "dismissed" on grounds that this Court lacks jurisdiction pursuant to provisions of Title 28 U.S.C. § 1291. Kelly further cites the "treatise" set forth in 17 Moore's Federal Practice § 111.60[1] as authority for his position.

(2) Kelly's ill-timed "Motion" misapprehends these alleged "authorities" in context with the "Collateral Order Doctrine" as set forth in **Clemence v. Clemence, 8 Kan.App.2d 377, 658 P.2d 368 (1983)**, i.e., "'Collateral order' doctrine allows appeal from interlocutory order which conclusively determines issue completely separate from merits of action, and which cannot be given effective review on appeal from subsequent final judgement; such order is, for purposes of appellate jurisdiction, 'final order'"; **Firestone Tire & Rubber Co. v. Risjord, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)**, i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, the order...is appealable under § 1291 **only if it falls within the *Cohen* doctrine**." (emphasis added); **Abney v. United States, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)** at FN4, i.e., "Of course, Cohen's **collateral-order exception** is equally applicable in both civil and criminal proceedings." (emphasis added); and **Armstrong v. McAlpin, 625 F.2d 433, C.A.N.Y. (1980)**, citing **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)** in which the Supreme Court held that "...certain orders were **immediately appealable** (1) if they were collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage...

---

[1] See Docket Entry #78 (excerpts appended hereto, as Exhibit "A1", for convenience of the Court).

to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until the whole case is adjudicated."

(3) There are a number of issues and factual allegations contained within Akers' pleadings in the instant case which make it abundantly clear that this appeal "falls squarely within" the "Collateral Order Doctrine" and "Cohen Doctrine" exceptions to Title 28 U.S.C. § 1291, e.g.:

> (a) There can be no question that the "ORDER" from which Akers appeals addresses issues which are "collateral to the merits" of Akers' case;
>
> (b) There can, as well, be no question whatsoever that "denial of an immediate appeal would result in irreparable damage" to Akers inasmuch as it is absurd to allege that Akers can receive a fair adjudication before a jury comprised of citizens of the Federal District of Eastern Kentucky at Lexington. That has been conclusively shown in Akers' two (2) criminal trials in Fayette [Kentucky] Circuit Court. To now require Akers to return to that jurisdiction to seek redress would be the equivalent of requiring the victims of the September 11, 2001, terrorist attacks to seek redress in Afghanistan, and before a jury comprised of Taliban loyalists. Additionally, in view of the heretofore overt acts by the Defendants-Appellees which gave rise to Akers' claims herein, there can be no reasonable doubt that those same Defendants-Appellees would reserve no opportunity to further imprison Akers by some other fraudulent means in order to prevent this case from proceeding. The Federal Courts would, once again, be powerless to intervene without extensive litigation and further drain on Akers' resources, liberty, and effectiveness in obtaining justice. It is just, simply, now impossible for Akers to ever return to the jurisdiction of the Defendants-Appellees and for the Federal Courts to so require would...

amount to a fundamental miscarriage of justice in addition to effectively granting a dismissal of Akers' claims; &

(c) Finally, there can be no question whatsoever that the issues raised hereinabove and, especially, with respect to the venue in which this case proceeds to trial are "too important" to "be deferred until the whole case is adjudicated." if any respect whatever for the Constitutional, Statutory, and common laws of the United States of America is to be rendered.

WHEREFORE, the Plaintiff-Appellant, James G. Akers, **without counsel**, respectfullly asks and prays of this Honorable Court to "**DENY**" the "MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS THE APPEAL FOR LACK OF JURISDICTION" and permit this case to proceed through the orderly appellate process as currently scheduled.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellee

Post Office Box 3648
Brentwood, Tennessee 37024

4708 Trousdale Drive
Nashville, Tennessee 37220

Telephone: 615/834-2843
Facsimile: 615/831-9307

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP, et al, Defendants-Appellees.**"; (2) I am a **citizen** of the **United States of America** and the **State of Tennessee** therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "**RESPONSE**" to the "MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS THE APPEAL FOR LACK OF JURISDICTION" via "**UNITED STATES MAIL-FIRST CLASS**", on the Defendants-Appellees named therein and/or their legal counsel as follows: **(Listing of served Parties and/or respective Counsel-of-Record omitted from instant Petition for Writ of Certiorari. See official record for listings.)**

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 30th day of November, 2001, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Anita J. Burke
NOTARY PUBLIC, State-at-large
My Commission Expires: 09/24/04

[END OF DOCUMENT]

F I L E D
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.

NOV 21 2000

BY _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

JAMES G. AKERS, Plaintiff,	) FILE NUMBER: 3:00cv1142) JUDGE ECHOLS
v.	) **MEMORANDUM &**) **MEMORANDUM OF LAW**
CAROLYN P. BISHOP; *et al*, Defendants.	)

COMES THE PLAINTIFF, James G. Akers, **without counsel**, and, in strict accordance with provisions of **TITLE 28 U.S.C. § 1654,** files with this Honorable Court the hereinafter "MEMORANDUM & MEMORANDUM OF LAW" in further support of the accompanying and contemporaneously-filed civil action pursuant to **TITLE 18 U.S.C. § 1964(c)**, **TITLE 42 U.S.C. § 1983**, & **TITLE 42 U.S.C. § 1985(3)**.

A. INTRODUCTION

1. On August 25, 1993, just two (2) months preceding the twenty-fifth (25th) anniversary of his marriage to Defendant Carolyn P. Bishop (nee Carolyn J. Patrick, then Carolyn P. Akers, now Carolyn P. Bishop, and referred to hereinafter as "Bishop"), the Plaintiff, James G. Akers (hereinafter "Akers") was awarded a sizeable cash settlement on behalf of Coleman/...

Akers & Akers, Incorporated (hereinafter "C/AA"), a Kentucky corporation owned an operated by Akers and based in the Lexington, Kentucky, area. The series of outrageous events which have transpired thereafter, and as set forth hereinafter in detail, have been such that should shock the very conscience of any responsible citizen of a free and democratic society in the modern world.

2. In a manner strikingly similar to historical accounts of colonial Salem, Massachusetts; "Nazi" Germany; and "cold war era" Soviet Bloc countries, Defendant Bishop and her hereinafter named co-conspirators have devised, effectuated, and perpetuated schemes to unlawfully seize, withhold, divert, and convert the property of Akers with intent to deprive him thereof; to unlawfully circumvent and/or abridge all of Akers' inalienable and lawful rights pursuant to, ***inter alia***, **Article I-Sections 9 & 10, Article III-Section 2, Article IV-Section 2**, and the **First, Fourth, Fifth, Sixth, Eighth, Thirteenth**, and **Fourteenth Amendments** of/to the **United States Constitution** and, in both overt and covert concealment of those said schemes, to oppressively deprive Akers of his liberty in such a manner as is hereinafter set forth in detail. Those said schemes and actions of and/or by the named herein Defendants **have not been limited** to "civil rights violations" under "color of state law", "color of office", and/or "malicious prosecution" but extend, in fact, to **criminal acts** in blatant and direct violationof the Federal Laws as are hereinafter enumerated.

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3. As will be hereinafter shown, in detal, the Plaintiff Akers was: (a) **assaulted, decoyed, inveigled, and robbed** in May and June of 1994 and, in the covert concealment thereof, was; (b) **unlawfully imprisoned** in May and July of 1994 and, in covert concealment thereof; (c) **blackmailed and/or extorted** from July of 1994 through March of 1995, and in further concealment thereof, was; (d) **essentially "kidnapped" and fraudulently held** in Nashville, Tennessee, during August and September, 1995, and, in the covert concealment thereof, was;

(e) **fraudulently extradited** back to Kentucky in October of 1995 and, in the **further concealment** of the hereinbefore schemes, was; (f) **fraudulently and maliciously accused, prosecuted, convicted, and then imprisoned** in custody of the Fayette County [Kentucky] Sheriff and/or Kentucky Department of Corrections from May 22, 1996, to April 15, 1998, until; (g) Akers was released from custody on a $52,000 Full Cash Bond pursuant to an "Opinion and Order", as rendered February 27, 1998, by the Kentucky Court of Appeals, which ruled that Akers' convictions and resulting imprisonment had been unlawfully achieved.

4. In the further concealment of those said schemes of/by the Defendants, and as an **intentional and continuing course of conduct** by them, Akers was: (a) **further blackmailed/extorted** in March of 1998; was (b) **further** oppressively imprisoned in April of 1998; was (c) **further blackmailed and/or extorted** from April through October of 1998, and then; (d) **yet again, oppressively and unlawfully prosecuted, convicted, and then**...

-3-

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imprisoned for the **very same unconstitutional and fraudulent felony charges**, pursuant to the **very same unconstitutional and fraudulent indictment**, as was the case in May of 1996.

5. Following Akers' additional unlawful, oppressive, and unconstitutional imprisonment since October 28, 1998, the Court of Appeals of Kentucky rendered Its **second** "Opinion" on May 19, 2000, in which It reversed (in part) Akers' convictions **for the second time** and ruling, in hereunto relevant part, as follows:

> **"It is clear that the trial court failed to follow our instructions on remand";**
>
> **"The court heard arguments as to the admissibility of the evidence. Prior to making its ruling, the court acknowledged that it had not read our decision";**
>
> **"Without reading our decision, the court could not have**

followed our directives";

"While our opinion did not specifically so require, the trial court should have granted Akers separate trials on each count";

"By not holding separate trials, the trial court abused its discretion and denied Akers a fair trial...";

"Fairness and justice require us to reverse his (Akers') **conviction..."** (emphasis added)

6. Akers is **not** an attorney, and **does not** have any formal training or education in the Law. Having been forced to expend **vast resources** in defense of the hereinafter enumerated unlawful acts committed by the named Defendants, and ancillary expenses related thereto, Akers can no longer afford, nor will he seek, further assistance and/or counsel of attorneys with respect to the matters set forth herein.

B. STATEMENT OF PURPOSE AND INTENT

1. The purpose(s) and intent of the within "MEMORANDUM & MEMORANDUM OF LAW" are to: (a) expose, disclose, encapsulate, and memorialize the events leading up to, contemporaneous with, and resulting from, certain criminal prosecutions depicted as: "Commonwealth of Kentucky vs. James G. Akers" under "Indictment No. 95-CR-984"; (b) to expose and/or disclose **the truth** with respect to all issues addressed and/or raised therein; (c) to apply both the **Constitutional and Statutory Laws** of the **United States of America** as they relate thereunto those said events, criminal prosecutions, and related matters; and (d) to serve as a "foundation" for the numerous avenues for redress which Plaintiff Akers is now **forced to pursue** in ultimate resolution of said criminal prosecutions and related matters thereto.

C. CITATION OF AUTHORITIES

UNITED STATES CONSTITUTION

ARTICLE I-SECTION 9: [1.] "The **migration** or importation of such persons as any of the states...shall think proper to admit, **shall not be prohibited**...; [2.] The privilege of the writ of habeas corpus **shall not be suspended**..."; [3.] "No bill of attainer or ***ex post facto* law**[1] shall be passed." (emphasis added)

---

[1] "Ex post facto law" defined: "A law passed **after the occurrence of a fact or commission of an act**, which retrospectively changes the legal consequences or relations of such fact or deed." "A law is **unconstitutionally** "**ex post facto**" if it deprives a defendant of a defense to criminal liability that he had prior to enactment of the law. State v. Rogers, Ohio Com.Pl., 346 N.E.2d 352, 361. Art. I, § 9(CL3) and § 10 of U.S. Const. prohibit both Congress and the states from passing any ex post facto law. An ex post facto law is defined as a law which provides for the ..." (continued, page 6 hereof)

ARTICLE I-SECTION 10: [1.] "**No state shall...pass any** bill of attainer, ***ex post facto* law**[1], or law impairing the obligation of contracts, or grant any title of nobility." (emphasis added)

ARTICLE III-SECTION 2: [1.] "The judicial power shall extend to all cases, **in law or equity**, arising under this constitution, the laws of the United States...; ...between citizens of different states; [3.] "The trial of **all crimes** ...shall be held...**in the state where the said crimes shall have been committed**"; (emphasis added)

ARTICLE IV-SECTION 2: [1.] "The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states"; [2.] "A person charged **in any state** with...felony, or other crime, **who shall flee from justice**, and be found in another state, shall...be delivered up, to be removed to the state having jurisdiction of the crime."[2] (emphasis added)

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[1] "Ex post facto law" defined (cont'd from page 5 hereof): "...infliction of punishment upon a person for an act done which, when it was committed, was innocent; **a law which aggravates a crime or makes it greater than when it was committed; a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed; a law that changes the rules of evidence** and receives less or different testimony than was required at the time of the commission of the offense in order to convict the offender; **a law which deprives persons accused of a crime of some lawful protection to which they have become entitled**, such as protection of a former conviction or acquittal...; **every law which**, in relation to the offense or consequences, **alters the situation of a person to his disadvantage**. Wilensky v. Fields, Fla., 267 So.2d 1, 5." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]

[2] "**Interstate extradition** involves a significant restraint of liberty and, as such, **necessitates a showing of probable cause**." **Wellington v. State of S.D., D.C.S.D.1976, 413 F.Supp., 151**. (emphasis added) See Also: **Walton v. State, 1977, 566 P.2d 765, 98 Idaho 422**; "**Probable cause** to find that a person to be extradited is a **fugitive from justice** in demanding state is a **condition precedent to valid extradition**." **Ross v. Hegstrom, 1969, 254 A.2d 556, 107 Conn. 403** (emph. added); "**In determining whether a party named in a requisition and rendition warrant is a fugitive from justice, a finding must be made** in substance that a crime is alleged, **that the named party committed the crime and fled from the demanding jurisdiction, and it must appear that accused was within the demanding state when crime was committed** so as to constitute him a fugitive by his commission of crime and his **later flight**." **State v. Phillips, 1960,162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63** (emphasis added); "In extradition proceedings, inquiry is restricted to whether accused is substantially charged with crime in the demanding state, **and whether he**..." (continued, page 7 hereof)

FIRST AMENDMENT: "Congress shall make no law respecting...religion, or prohibiting the free exercise thereof; **or abridging freedom of speech...**; [or the right to] petition the government for **redress of grievances**"; (emphasis added)

FOURTH AMENDMENT: "The right of the people to be secure in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated, and **no Warrants shall issue, but upon probable cause**"[2]; (emphasis added)

FIFTH AMENDMENT: "No person shall **be held** to answer for ...infamous crime, **unless on a presentment or indictment**[3] of a...

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[2] "**Interstate extradition**" (continued from page 6 hereof): "...**was physically in the demanding state at time crime charged is alleged to have been committed.**" **People v. ex rel. Johnson v. Ruthazer, 1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905** (emph. added); **Clayton v. Wichael, 1966, 141 N.W. 2d 538, 258 Iowa 1037; Wigehert v. Lockhart, 1946, 166 P.2d 988, 114 Colo. 485; Ex parte Foster, 1936, 61 P.2d 37, 60 Okla.Cr. 50**; "**No person may be lawfully removed from one stateto another** by virtue of this [Sec. 2, cl. 2], **unless ...; 2. He has fled from justice**; ..., and if **either of these conditions are absent, the Constitution affords no warrant for** a restraint of the liberty of **any person.**" **Pierce v. Creecy, Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113; Ex parte Morgan, D.C.Cal. 1948, 78 F.Supp. 756, affirmed 175 F.2d 404, certiorari denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed. 503**; "**Under this [Sec. 2, cl. 2] and Federal Extradition Act, 18 U.S.C.A.** former § 662 [now **§§ 3182, 3195**], **an extradition is unwarranted unless the accused is a fugitive from justice, and a 'fugitive from justice' is a person who commits a crime within a state and withdraws himself from such jurisdiction** without waiting to abide the consequences of his act". **Ex parte Montoya, 1943, 135 P.2d 281, 170 Or. 499.** (emphasis added)

[3] "**Presentment**" defined: "A presentment is an accusation, **initiated by the grand jury itself**, and in effect is an instruction that an indictment be drawn. U.S. v. Briggs, C.A.Fla., 514 F.2d 794, 804. A written accusation of crime **made and returned by the grand jury upon its own initiative** in the lawful exercise of its lawful inquisitorial powers, is in the form of a bill of indictment, and in practice is signed individually by all the grand jurors who return it. State v. Hudson, Tenn.Cr.App., 487 S.W.2d 672, 674"; "**Indictment**" defined: "An accusation in writing **found and presented by a grand jury, legally convoked and sworn**, ...charging that a person therein named has done some act, or been guilty of some ommission, which by law is a public offense, punishable on indictment. A formal written accusation originating with a prosecutor and **issued by a grand jury** against a party charged with a crime." [Black's Law Dictionary, Sixth Edition, 12th reprint-1998 (emphasis added)]

Grand Jury, **nor shall any person be subject for the same offence to be twice put in jeopardy** of life or limb"[4]; ...**nor be deprived of**...**liberty**, or property, **without due process of law**"[5];

(emphasis added)

SIXTH AMENDMENT: "In **all criminal prosecutions**, the accused shall enjoy the right to a speedy and public trial, **by an impartial jury** of the **State...wherein the crime shall have been committed**..., to be informed of the nature...of the accusation; and...to have compulsory process for obtaining witnesses in his favor"; (emphasis added)

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[4] **See also: North Carolina v. Pearce, 89 S.Ct. 2089 (1969)**, i.e., "[727]...The theory of double jeopardy is that a person need run the gantlet only once. The gantlet is the **risk of range of punishment** which the State...imposes for that particular conduct. He risks the **maximum permissible punishment when first tried**. **That risk having been faced once** need not be faced again. **And the fact that he takes**..." (continued, page 9 hereof)

[5] **"Due process of law" defined**: "Law in its regular course of administration through courts of justice. ...Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgement upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting... every material fact which bears on the question of right in the matter involved. **If any question of fact or liability be conclusively presumed against him, this is not due process of law**. An orderly proceeding wherein a person is **served with notice**, actual or constructive, and **has an opportunity to be heard and to enforce and protect his rights** before a court having power to hear and determine the case. ...**The concept of 'due process of law' as it is embodied in the Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious**... U. S. v. Smith, D.C. Iowa, 249 F.Supp. 515, 516. Fundamental requisite of 'due process' is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest... Trinity Episcopal Corp. v. Romney, D.C.N.Y., 387 F.Supp. 1044, 1084. **Aside from all else, 'due process' means fundamental fairness and substantial justice**. Vaughn v. State, 3 Tenn. Crim. App. 54, 456 S.W.2d, 879, 883. Embodied in the due process concept are the basic rights of a defendant in criminal cases and the requisites for a fair trial. These rights and requirements have been expanded by Supreme Court decisions and include, timely notice of a hearing or trial which informs the accused of the charges against him or her; **the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge**; the presumption of innocence under which **guilt must be proven** by legally obtained evidence and **the verdict must be supported by the evidence presented**; ...and **the guarantee that an individual will not be tried more than once for the same offense (double jeopardy)**." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]

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[4] **North Carolina v. Pearce** (continued from page 8 hereof): "...**an appeal does not waive his constitutional defense of former jeopardy to a second prosecution**. Green v. United States, 355 U.S. 184, 191-193, 78 U.S.Ct. 221, 225, 227, 2 L.Ed. 2d 199. ...It is argued that this case is different because there were two different crimes with different punishments for each one. That, however, is a matter of semantics. 'It is immaterial to the basic purpose of the constitutional provision against double jeopardy whether the Legislature divides a crime into different degrees carrying different punishments, or [728] allows the court or jury to fix different punishments for the same crime'. People v. Henderson, 60 Cal. 2d 482, 497, 35 Rptr. 77, 86, 386 P.2d 677, 686 (1963) (Traynor, J.) ...'It was established at an early date that the Fifth Amendment was designed to prevent an accused from [729] **running the risk of 'double punishment'**. United States v. Ewell, 383 U.S. 116, 124, 86 S.Ct. 773, 778, 15 L.Ed.2d 627. When Madison introduced to the First Congress his draft of what became the Double Jeopardy Clause, it read: 'No person shall be subject, except in cases of impeachment, to *more than one punishment* or one trial for the same offense * * *' (Emphasis supplied) 1 Annals of Cong. 434. ...'By forbidding that no person shall be subject for the same offense to be twice put in jeopardy of life or limb, [the safeguard of the Fifth Amendment against double punishment] guarded against the repitition of history by * * * punishing [a man] for an offense when he had already suffered the punishment for it.' Roberts v. United States, 320 U.S. 264, 276, 64 S.Ct. 113, 119, 88 L.Ed. 41, (Frankfurter, J., dissenting). 'The inquiry, then, is into the meaning of 'double' or 'multiple' punishment. In Ex parte Lange, 18 Wall. 163, 21 L.Ed. 872, the petitioner...[730]...had **already suffered complete punishment for his crime and could not be subjected to further sanction**: 'If there is anything settled in the jurisprudence of England and America, it is that **no man can be twice lawfully punished for the same offence**.' And though there have been some nice questions in the application of this rule to cases in which the act charged was such as to come within the definition of more than one statutory offence, there has never been any doubt of its entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offence.' *Id.* at 168. ...It was not until United States v. Benz, 282 U.S. 304, 51 S.Ct. 113, 75 L.Ed. 354, that the Court clarified its position. ...'The general rule is that judgements, decrees and orders are within the control of the court during the term in which they were made. * * * The rule is not confined to civil cases, but applies to criminal [731] cases as well, *provided that the punishment not be augmented*, Ex parte Lange, 18 Wall. 163, 167-174, 21 L.Ed. 872 [additional citations ommitted]. In the present case the power of the court was exercised to mitigate the punishment, not to increase it, and thus brought within the limitation. * * * ...[733] The ban on double jeopardy has its deep roots in the history of occidental jurisprudence. 'Fear and abhorrence of government power to try people twice for the **same conduct** is one of the oldest ideas found in western civilization.' Bartkus v. Illinois, 359 U.S. 121, 151-155, 79 S.Ct. 676, 3

L.Ed.2d 684 (Black, J., dissenting). And its purposes are several. **It prevents the State from using the criminal process as an instrument of harrassment to wear the accused out** by a multitude of cases with accumulated trials. Abbate v. United States, 359 U.S. S.Ct. 666, 672-673, 3 L.Ed.2d, 72..." (continued, page 10 hereof)

EIGHTH AMENDMENT: "**Excessive bail** shall not be required, ...nor...**unusual punishments** inflicted"; (emphasis added)

THIRTEENTH AMENDMENT: "Neither slavery nor **involuntary servitude**, except as punishment for crime whereof the party shall have been **duly convicted**, shall exist within the United States or **any place** subject to their jurisdiction"; (emphasis added)

FOURTEENTH AMENDMENT: "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside. No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor...

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[4] **North Carolina v. Pearce** (continued from page 9 hereof): "...'The vice [735] of this procedure lies in relitagating the **same evidence** before two different juries with a man's innocence or guilt at stake'. ...'**Harrasment of an accused by successive prosecutions**...so as to afford the prosecution a more favorable opportunity to convict are examples when jeopardy attaches. Downum v. United States, 372 U.S. 734, 736, 83 S.Ct. 1033, 1034, 10 L.Ed.2d 100. ...'**This case presents an instance of the prosecution being allowed to harrass the accused with repeated trials and convictions on the same evidence**, until it achieves its desired result...' Ciucci v. Illinois, 356 U.S. 571, 573, 78 S.Ct. 839, 840, 2 L.Ed.2d 983. ...Manifestly it is not the danger of jeopardy of being a second time found guilty. It is the **punishment** that would legally follow the second conviction which is the real danger guarded against by the Constitution. ...It is doubtless true that the State has an interest in adjusting sentences upward [737] when it discovers new evidence warranting that result. But **the individual has an interest in remaining free of double punishment**. And in weighing those interests against one another, **the Constitution has decided the matter in favor of the individual**. See United States v. Tateo, 377 U.S. 463, 475, 84 S.Ct. 1587, 1594, 12 L.Ed.2d, 448" (emphasis added); **See also**: **Menna v. New York**, **423**

U.S. 61, 96 S.Ct. 241, 46 LEd(2d) 195 (1975), i.e., "Where the State is precluded by the United States Constitution from haling a defendant into court on a charge, **federal law requires that conviction to be set aside even if the conviction was entered pursuant to a counseled plea of guilty**" (emphasis added); **Abney v. United States, 431 US 651, 97 SCt, 52 LEd(2d) 651 (1977)**, i.e., "Double jeopardy clause protects an individual against more than being subjected to double punishments; **it is a guarantee against being twice put to trial for the same offense**. U.S.C.A. Const. Amend. 5" (emphasis added); and **Fourteenth Amendment to the United States Constitution** [pages 10 & 11 hereof], i.e., "**No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ...nor deny any person within its jurisdiction equal protection of the laws**". (emphasis added)

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deny any **person within its jurisdiction equal protection of the laws**"[6]; (emphasis added)

UNITED STATES CODES ANNOTATED

TITLE 18 U.S.C. § 2. Principals: (a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commission, **is punishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal. (emphasis added)

TITLE 18 U.S.C. § 3. Accessory after the fact: Whoever, knowing that an offense against the United States has been committed, **receives, relieves**, comforts **or assists** the offender in order to hinder or prevent his apprehension, trial or punishment, **is an accessory after the fact**. (emphasis added)

TITLE 18 U.S.C. § 4. Misprison of felony: Whoever, **having knowledge** of the actual commission of a felony cognizable by a court of the United States, **conceals and does not as soon as possible make known the same** to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years or both. (emphasis added)

TITLE 18 U.S.C. § 5. United States defined: The term "United States", as used in this title in a territorial sense,

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[6] "Equal protection of the law" defined: **"The constitutional guarantee of "equal protection of the law" means that no person or class of persons shall be denied the same protection of the laws...in their lives, liberty, prop-erty, or in their pursuit of happiness.** People v. Jacobs, 27 Cal.App.3d 246, 103 Cal.Rptr. 536, 543; 14th Amend., U.S. Const. ...**The equal protection of the laws of a state is extended to persons within its jurisdiction...with like rules of evidence and modes of procedure, for the security of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; ...when no different or greater punishment is enforced against them for a violation of the laws."** See also: **"Equal protection clause", i.e., "That provision of the 14th Amendment to U.S. Constitution which prohibits a State from denying any person within its jurisdiction the equal protection of the laws. This clause requires that persons...be given equal protection** in the enjoyment of personal rights and the prevention **and redress of wrongs."** [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]

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includes **all places** and waters, continental or insular, **subject to the jurisdiction of the United States**, except the Canal Zone. (emphasis added)

TITLE 18 U.S.C. § 873. Blackmail: Whoever, **under threat** of informing, or as a consideration for not informing, against any law of the United States, **demands...any money or other valuable thing**, shall be fined under this title or imprisoned not more than one year, or both. (emphasis added)

TITLE 18 U.S.C. § 875. Interstate communications: (d) Whoever, **with intent to extort** from any person, firm, association, or corporation, **any money or other thing of value, transmits in interstate** or foreign commerce **any communication** containing any threat to injure the property **or reputation** of... another...**or any threat to accuse...any other person of a crime**, shall be fined under this title or imprisoned not more than two years, or both. (emphasis added)

TITLE 18 U.S.C. § 876. Mailing threatening communications: Whoever, **with intent to extort** from any person **any money or other thing of value**, knowingly so deposits or causes to be delivered, as aforesaid, **any communication**, with or without a name or designating mark subscribed thereto, addressed to any other person **containing**

any threat to accuse...any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both. (emphasis added)

TITLE 18 U.S.C. § 1201. Kidnapping: (a) Whoever, unlawfully **seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds** for ransom or reward **or otherwise** any person, except in the case of a minor by the parent thereof, when -- (1) the person is **willfully transported in interstate commerce**; (2) any such act against the person is done within the special maritime jurisdiction of the United States; (b) With respect to subsection (a)(1) above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce. (c) **If two or more persons conspire to violate this section** and one or more of such persons do any covert act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life. (emphasis added)

TITLE 18 U.S.C. § 1203. Hostage taking: (a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens...to continue to detain another person in order to...

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compel a third party to do or abstain from doing any act **as an** explicit or implicit condition for the release of the person detained, or attempts **or conspires to do so**, shall be imprisoned for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment. (emphasis added)

TITLE 18 U.S.C. § 1341. Frauds[7] and swindles: Whoever, **having devised or intending to devise** any scheme or artifice to defraud, **or for obtaining money or property by means of false or fraudulent pretenses, ...or attempting so to do**, places in any post office or authorized depository for mail matter, **any matter or thing whatever** to be sent or delivered by

the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be **sent or delivered by any private** or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, **or knowingly causes to be delivered** by such carrier according to the direction thereon, or at the place at which it is directed to be delivered to the person to whom it is addressed, **any such matter or thing**, shall be fined under this title or imprisoned not more than five years, or both. (emphasis added)

TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror[8] generally: (a) Whoever **corruptly...endeavors to influence or impede any grand or petit juror**, or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b). (emphasis added)

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[7] "Fraud" defined: "A **false representation of a matter of fact**, whether by words or by conduct, **by false or misleading allegations, or by concealment of that which should have been disclosed**, which deceives and is intended to deceive another so that he shall act upon it to his legal injury; ...A generic term, embracing all multifarious means which human ingenuity can devise, ...to get advantage over another by false suggestions or **by suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false**, whether it be direct falsehood or by innuendo, by speech or **by silence**, by word of mouth, **or by look or gesture**. [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

[8] **See also**: "**Tampering with jury**": "...The act of attempting to influence a juror corruptly by...persuasions, entreaties, ...or **any other means** except the production of evidence in open court. *See e.g.* 18 U.S.C.A § 1503, 1504." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

TITLE 18 U.S.C. § 1512. Tampering[9] with a witness, victim, or an informant: (b) Whoever knowingly uses

intimidation...or corruptly persuades another person, **or attempts to do so**, or engages in misleading conduct toward another person, **with intent** to -- (1) **influence**, delay, **or prevent the testimony of any person** in an official proceeding; (2) **cause or induce any person to** -- (A) withhold testimony, or withhold a record, document, or other object from an official proceeding; (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's integrity** or availability in an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both. (emphasis added)

TITLE 18 U.S.C. § 1961. Definitions: (1) "racketeering activity" means (A) **any act or threat** involving...kidnapping, ... robbery, bribery, extortion, ... or **which is chargeable under state law and punishable by imprisonment for more than one year**; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), ...section 1503 (relating to obstruction of justice); ...section 1512 (relating to tampering with a witness, victim, or an informant); (2) "State" means **any State** of the United States, the District of Columbia, the Commonwealth of Puerto Rico, **any territory** or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) "person" includes any individual, or entity capable of holding a legal or beneficial interest in any property; (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and **any union or group of individuals associated in fact** although not a legal entity; (5) "pattern of racketeering activity" **requires at least two acts** of racketeering activity, one of which occurred after the effective date of this chapter and at least one of which occurred within ten years after the commission of a prior act of racketeering activity; (emphasis added)

TITLE 18 U.S.C. § 1962. Prohibited activities: (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...in which such person has participated as a principal within the meaning of section 2, title 18, ...

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[9] "Tamper" defined: "To meddle so as to alter a thing, especially to make illegal, corrupting or perverting changes; as to tamper with a document or text; to interfere with improperly; ...To illegally change as to tamper with...a witness or victim (U.S.C.A. § 1503, et seq.)." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

United States Code, **to use or invest, directly or indirectly, any part of such income**, in acquisition of any interest in, **or the activities of which affect**, interstate commerce; (d) It shall be unlawful for any person **to conspire** to violate any of the provisions of subsection (a), (b), or (c) of this section; (emphasis added)

TITLE 18 U.S.C. § 1964. Civil remedies: (c) **Any person injured in his business or property** by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and **shall recover threefold the damages he sustains** and the cost of the suit, including a reasonable attorney's fee...; (emphasis added)

TITLE 18 U.S.C. § 1965. Venue and process: (b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice equire that other parties residing in other districts be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof; (d) All other process in any action or proceeding under this chapter may be served in any judicial district in which the person resides, is found, has an agent, or transacts his affairs;

TITLE 18 U.S.C. § 2261. Interstate domestic violence: (a) **Offenses. - (1) Crossing a State Line.** - A person who **travels** across a State line...**with intent** to injure, harass, or intimidate that person's spouse or intimate partner, **and** who, in the course of or as a result of such travel, **intentionally commits a crime of violence and thereby causes bodily injury** to such spouse or intimidate partner, shall be punished as provided in subsection (b). (emphasis added)

TITLE 18 U.S.C. § 2261A. Interstate stalking: Whoever **travels** across a State line or within the...territorial jurisdiction of the United States **with the intent** to injure or harass another person, **and** in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury (as defined in section 1365(g)(3) of this title) to, that person or a member of that person's immediate family (as defined in section 115 of this title) shall be punished as provided in section 2261 of this title. (emphasis added)

TITLE 18 U.S.C. § 2262. Interstate violation of protection order: (a) Offenses. - (1) Crossing a State line. - A person who travels across a State line...with the intent to engage in conduct that - **(A)(i)** violates the portion of a protective order

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that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued; or (ii) would violate this paragraph if the conduct occurred in the jurisdiction in which the order was issued; **and (B) subsequently engages in such conduct**, shall be punished as provided in subsection (b). (emphasis added)

TITLE 18 U.S.C. § 2265. Full faith and credit given to protection orders: (a) Full faith and credit. - Any protection order issued **that is consistent with subsection (b) of this section** by the court of one State...(the issuing State...) shall be accorded full faith and credit by the court of another State ...(the enforcing State...) and enforced as if it were the order of the enforcing State... (b) Protection order. - A protection order issued by a State...**is consistent with this subsection if –** (1) such court has **jurisdiction over the parties** and matter under the law of such State...; **and** (2) **reasonable notice and opportunity to be heard is given** to the person against whom the order is sought sufficient **to protect that person's right to due process**. In the case of ex parte orders, **notice and opportunity to be heard must be provided** within the time required by State ...law, and **in any event within a reasonable time** after the order is issued,

sufficient **to protect the respondent's due process rights.** (emphasis added)

TITLE 28 U.S.C. § 1654: In all courts of the United States, **the parties may plead and conduct their own cases personally** or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein; (emphasis added)

TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights: Every person who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress; (emphasis added)

TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights: (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws,** ...

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or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy**[10, 11, 12] set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators; (emphasis

added)

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[10] "Conspiracy" defined: "A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or **some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators**, or for the purpose of using criminal or unlawful means to the commission of an act in itself unlawful. A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he: (a) agrees with other such person that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime. Model Penal Code, § 5.03. **A conspiracy may be a continuing one; actors may drop out, and others drop in**; the details of operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose. **There are a number of federal statutes prohibiting specific types of conspiracy**." [Black's Law Dictionary, Abridged Sixth Edition, 8th Reprint-1988 (emphasis added)]

[11] "*[Chain] Conspiracy*" defined: "Such a conspiracy is characterized by different activities carried on with same subject of conspiracy in chain-like manner that **each conpsirator in a chain-like manner performs a separate function which serves in the accomplishment of the overall conspiracy**." [Black's Law Dictionary, Abridged Sixth Edition, 8th Reprint-1988 (emphasis added)]

[12] "*[Civil] Conspiracy*" defined: "The essence of a 'civil conspiracy' is a concert or combination to defraud or cause other injury to person or property, which results in damage to the person or property of plaintiff." **See also**: **"[Civil] Conspiracy" further defined**: "A combination of two or more persons who, by concerted action, seek to accomplish an unlawful purpose or to accomplish some purpose, not in itself unlawful, by unlawful means." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988 (emphasis added)]

CONSTITUTION OF TENNESSEE

ARTICLE 1, SECTION 3. Freedom of worship. - "That all men have a natural and indefeasible right to worship Almighty God to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; **that no human authority can, in any case whatsoever, control or interfere with the rights of conscience**[13]; and that no preference shall ever be given to any religious establishment or mode of worship." (emphasis added)

ARTICLE 1, SECTION 8. No man to be disturbed by law. - "That **no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges**, outlawed, **or exiled or in any manner destroyed or deprived of his life, liberty, or property, but by the judgement of his peers or the law of the land**."[14] (emphasis added)

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[13] See also: Ky Const § 1 [page 26 hereof], i.e., "Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ...redress of grievances, bearing arms: "**All men** are, by nature, free and equal, and **have certain inherent and inalienable rights**, among which may be reckoned: ...**Second**: The right of worshipping Almighty God **according to the dictates of their consciences**; ...**Fourth**: The right of **freely communicating their thoughts and opinions** (emphasis added); **ARTICLE IV-SECTION 2**, U. S. Constitution [supra, page 6 hereof], i.e., [1.] "The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states"; **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., " **All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**"; (emphasis added)

[14] See also: Ky Const § 1 [page 26 hereof], i.e., "Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ...redress of grievances, bearing arms: "**All men** are, by nature, free and equal, and **have certain inherent and inalienable rights**, among wich may be reckoned: **First**: The right of enjoying and **defending their** lives and **liberties**; **Third**: The right of seeking and pursuing their safety and happiness; **Fifth**: The right of acquiring and **protecting property** (emphasis added); **ARTICLE III-SECTION 2 [3.], U.S. CONST.** [supra, page 6 hereof], i.e., "The

trial of **all crimes**...shall be held...**in the state where the said crimes shall have been committed**" (emph. added); **ARTICLE IV-SECTION 2 [1.], U.S. CONST.** [supra, page 6 hereof], i.e., "The citizens of each state shall be entitled to **all privileges and immunities**..." (continued, page 19 hereof)

ARTICLE 1, SECTION 10. Double jeopardy prohibited - "That **no person shall**, for the same offence, **be twice put in jeopardy** of life or limb."[15] (emphasis added)

ARTICLE 1, SECTION 14. Prerequisites to criminal charge. - "That **no man shall be put to answer any criminal charge** but by presentment, indictment[16] **or impeachment**." (emphasis added)

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[14] **ARTICLE IV-SECTION 2 [1.], U.S. CONST.** (continued from page 18 hereof): "...of citizens in the several states"; **U.S. Const. Amend. 4** [supra, page 6 hereof], i.e., "The right of the people to be secure in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated, and **no Warrants shall issue, but upon probable cause**" (emphasis added); and **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws.**" (emphasis added)

[15] See also: **Ky Const § 13** [page 27 hereof], i.e., "**No person shall**, for the same offense, **be twice put in jeopardy** of his life and limb..." (emphasis added); **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws.**" (emphasis added)

[16] See also: **Ky Const § 12** [page 27 hereof], i.e., "No person, **for an indictable offense**, shall be proceeded against criminally by information ..., or by leave of court for oppression or misdemeanor in office" (emphasis added); **U.S. Const. Amend. 5** [supra, pages 7 & 8], i.e., "No person shall **be held** to answer for...infamous crime, **unless on a presentment or indictment** of a Grand Jury,

...**nor be deprived of**...**liberty**, or property, **without due process of law**" (emph. added); and **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws.**" (emphasis added)

ARTICLE 1, SECTION 15. Bailable offenses - Habeas corpus -"That **all prisoners shall be bailable by sufficient sureties**, unless for capital offences, when the proof is evident, or the presumption great. And **the writ of Habeas corpus shall not be suspended**, unless in case of rebellion or invasion, the General Assembly shall declare the public safety requires it.[17] (emphasis added)

ARTICLE 1, SECTION 16. Restrictions on bail, fines and punishment - "That **excessive bail shall not be required**, nor excessive fines imposed, **no cruel and unusual punishments inflicted.**"[17] (emphasis added)

ARTICLE 1, SECTION 19. Freedom of speech and press. - "That ...**[t]he free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may speak, write, and print on any subject**[18], being responsible for the abuse of that liberty. ..." (emphasis added)

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[17] See also: "**Ky Const § 16** [page 27 hereof], i.e., "**Right to bail; habeas corpus**: "**All prisoners shall be bailable** by sufficient securities, unless for capital offenses when the proof is evident or the presumption is great; and **the privilege of the writ of habeas corpus shall not be suspended** unless when, in case of rebellion or invasion, the public safety may require it." (emphasis added); **ARTICLE I-SECTION 9, U. S. Constitution** [supra, page 5 hereof], i.e., "[2.] The privilege of the writ of habeas corpus **shall not be suspended**..." (emphasis added); **ARTICLE IV-SECTION 2, U. S. Constitution** [supra, page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **U.S. Const. Amend. 8** [supra, page 10 hereof], i.e., "**Excessive bail** shall not be required,

nor...**unusual punishments** inflicted" (emphasis added); and **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws.**" (emphasis added)

[18] See also: **ARTICLE 1, SECTION 3. Freedom of worship, Tenn. Const.** [supra, page 18 hereof], i.e., "That all men have a natural and indefeasible right to worship Almighty God to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; **that no human authority can, in any case whatsoever, control or interfere with the rights of conscience**; ..." (emphasis added); footnote [13] thereto [id., page 17]; and hereinafter paragraphs E-4 thru E-6, E-19 thru E-22, E-24, E-28(b), & E-55 thru E-60.

TENNESSEE CRIMINAL CODE

39-17-308. Harassment. - "(a) A person commits an offense who **intentionally**: (2) **Places one (1) or more telephone calls** anonymously, or at an inconvenient hour, or **in an offensively repetitious manner**, or **without a legitimate purpose of communication, and by this action knowingly annoys or alarms the recipient;**[19] (b) **A violation of this section is a Class A misdemeanor**." (emphasis added)

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[19] See hereinafter paragraphs E-43, E-45, E-56 thru E-58, E-60 thru E-64, E-67, & E-68. See also: **ARTICLE I-SECTION 10**, U.S. Constitution [supra, page 6 hereof, i.e., "[1.] **No state shall...pass any...*ex post facto* law**, or law impairing the obligation of contracts..." (emphasis added); **ARTICLE IV- SECTION 2**, U.S. Constitution [supra page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states..." (emphasis added); **U.S. Const. Amend. 1** [supra, page 7 hereof], i.e., "Congress shall make no law respecting...religion, or prohibiting the free exercise thereof; **or abridging freedom of speech...**" (emphasis added); **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United

States..." (emphasis added); **ARTICLE 1, SECTION 3, Constitution of Tennessee** [supra, page 17 hereof], i.e., "That all men have a natural and indefeasible right to worship Almighty God to the dictates of their own conscience; ...**that no human authority can, in any case whatsoever, control or interfere with the rights of conscience**" (emphasis added); **ARTICLE 1, SECTION 19, Constitution of Tennessee** [supra, page 20 hereof], i.e., "That ...**[t]he free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may speak, write, and print on any subject**, being responsible for the abuse of that liberty. ..." (emphasis added); **Ky Const § 5** [supra, page 26 hereof], i.e., "...**the civil rights, privileges or capacities of no person shall be** taken away, **or in anywise diminished or enlarged**, on account of his belief or disbelief of any religious tenet, dogma or teaching. **No human authority shall**, in any case whatever, **control or interfere with the rights of conscience**" (emphasis added); **Ky Const § 8** [supra, page 26 hereof], i.e., "...**every person may freely speak, write and print on any subject**, being responsible for the abuse of that liberty" (emphasis added); **Ky Const § 19** [supra, page 27 hereof], i.e., "(1) No **ex post facto** law, ...shall be enacted" (emphasis added); **Ky Const § 24** [supra, page 28 hereof], i.e., "**Emigration** from the State **shall not be prohibited**" (emphasis added); and **Ky Const § 26** [id.]: "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**." (emphasis added)

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39-17-309. Civil rights intimidation. - "(a) The general assembly finds and declares that **it is the right of every person regardless of race, color**, ancestry, or national origin, **to be secure and protected from fear, intimidation, harassment and bodily injury caused by the activities of groups and individuals. It is not the intent of this section to interfere with the exercise of rights protected by the constitution of the United States.** The general assembly recognizes the constitutional **right of every citizen to harbor and express beliefs on any subject**[20] and to associate with others who share similar beliefs. The general assembly further finds that the advocacy of unlawful acts by groups or individuals against other persons or groups for the purpose of inciting and provoking damage to property and bodily injury or death to persons is not constitutionally protected, poses a threat to public order and safety, and should be subject to criminal sanctions.

(b) **A person commits the offense of intimidating others from exercising civil rights who:** (1) Injures or threatens to injure or **coerces another person with the intent to unlawfully intimidate another from the free exercise or enjoyment of any right or privilege secured by the constitution or laws of the state of Tennessee;**[21]

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[20] See hereinbefore footnote [19] [supra, page 21 hereof].

[21] See: Tennessee Constitution: **ARTICLE 1, SECTION 3. Freedom of worship** [supra, page 18 hereof], i.e, "That all men have a natural and indefeasible right to worship Almighty God to the dictates of their own conscience; ...**that no human authority can, in any case whatsoever, control or interfere with the rights of conscience**" (emphasis added); **ARTICLE 1, SECTION 8. No man to be disturbed by law** [supra, page 18 hereof], i.e, "That **no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges**, outlawed, **or exiled or in any manner destroyed or deprived of his life, liberty, or property, but by the judgement of his peers or the law of the land**" (emphasis added); **ARTICLE 1, SECTION 10. Double jeopardy prohibited** [supra, page 19 hereof], i.e., "That **no person shall**, for the same offence, **be twice put in jeopardy** of life or limb" (emphasis added); **ARTICLE 1, SECTION 14. Prerequisites to criminal charge** [supra, page 19 hereof], i.e., "That **no man shall be put to answer any criminal charge but by presentment, indictment or impeachment**" (emphasis added); **ARTICLE 1, SECTION 15. Bailable offenses - Habeas corpus** [supra, page 20 hereof], i.e., "That **all prisoners shall be bailable by sufficient sureties**, ...And **the writ of Habeas corpus shall not be suspended**, unless in case of rebellion or invasion, the General Assembly shall declare the public safety requires it" (emphasis added); **ARTICLE 1, SECTION 16. Restrictions on bail, fines and punishment** [supra, page 20 hereof], i.e., "That **excessive bail shall not be required**, nor excessive fines imposed, **no cruel and unusual punishments inflicted**" (emphasis added); and **ARTICLE 1, SECTION 19. Freedom of speech...** [supra, page 20 hereof], i.e., "That..." (continued, page 23 hereof)

[or] (2) Injures or **threatens to injure or coerces another person with the intent to unlawfully intimidate another because that other exercised any right or privilege secured by the constitution or laws of the United States**[22] **or the constitution or laws of the state of Tennessee;** ...(d) **A violation of**

subsection (b) is a Class D felony." (emphasis added)

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[21] **Tennessee Constitution** (continued from page 22 hereof): "...**[t]he free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may speak, write, and print on any subject**, being responsible for the abuse of that liberty." (emphasis added)

[22] **See**: **ARTICLE I-SECTION 9, U.S. Constitution** [supra, page 5 hereof], i.e., "[1.] The **migration** or importation of such persons as any of the states...shall think proper to admit, **shall not be prohibited**...; [2.] The privilege of the writ of habeas corpus **shall not be suspended**..."; [3.] "No bill of attainer or ***ex post facto* law** shall be passed." (emphasis added); **ARTICLE I - SECTION 10**, U.S. Constitution [supra, page 6 hereof], i.e., "[1.] **No state shall...pass any...*ex post facto* law**, or law impairing the obligation of contracts..." (emphasis added); **ARTICLE III-SECTION 2**, U.S. Constitution [supra, page 6 hereof], i.e., "[3.] "The trial of **all crimes**...shall be held ...**in the state where the said crimes shall have been committed**" (emphasis added); **ARTICLE IV-SECTION 2, U.S. Constitution [supra, page** 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states"; **U.S. Const. Amend. 4** [supra, page 7 hereof], i.e., "The right of the people to be secure in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated, and **no Warrants shall issue, but upon probable cause**" (emphasis added); **U.S. Const. Amend. 5** [supra, pages 7 & 8 hereof], i.e., "No person shall **be held** to answer for...infamous crime, **unless on a presentment or indictment** of a Grand Jury, **nor shall any person be subject for the same offence to be twice put in jeopardy** of life or limb"; ...**nor be deprived of**...**liberty**, or property, **without due process of law**" (emphasis added); **U.S. Const. Amend 6** [supra, page 8 hereof], i.e., "In **all criminal prosecutions**, the accused shall enjoy the right to a speedy and public trial, **by an impartial jury** of the **State...wherein the crime shall have been committed**..., to be informed of the nature...of the accusation; and...to have compulsory process for obtaining witnesses in his favor" (emph. added); **U.S. Const. Amend 8** [supra, page 10 hereof], i.e., "**Excessive bail** shall not be required, ...nor...**unusual punishments** inflicted" (emph. added); **U.S. Const. Amend 13** [supra, page 10 hereof], i.e., "Neither slavery nor **involuntary servitude**, except as punishment for crime whereof the party shall have been **duly convicted**, shall exist within the United States or **any place** subject to their jurisdiction" (emphasis added); **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the..." (continued, page 24 hereof)

40-9-118. Authority given by governor's warrant. - "(a) **The warrant shall authorize the officer or other person to whom directed** to arrest the accused at any place where the accused may be found within [Tennessee] and to command the aid of all sheriffs and other peace officers in the execution of the warrant, and **to deliver the accused, subject to the provisions of this chapter[23], to the duly-authorized agent of the demanding state.**" (emphasis added)

40-9-119. Information to person arrested - Habeas corpus. - "**No person arrested upon such a warrant shall be delivered over to the agent whom the executive authority demanding the person has appointed** to receive the person, **unless the person has been informed of the crime with which the person is charged,** and that the person has the right to demand legal counsel. **If the prisoner, the prisoner's friends or counsel shall state that the person or they desire to test the legality of the arrest[24], the prisoner shall be taken forthwith before a judge of a court of...**

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[22] **U.S. Const. Amend. 14** (continued from page 23 hereof): "...the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emph. added); **TITLE 18 U.S.C. § 873. Blackmail** [supra, page 12 hereof], i.e., "Whoever, **under threat** of informing, or as a consideration for not informing, against any law of the United States, **demands...any money or other valuable thing,** shall be fined under this title or imprisoned not more than one year, or both." (emphasis added) [see, e.g., hereinafter paragraphs E-16, E-24, & E-50(e)]; **TITLE 18 U.S.C. § 875. Interstate communications** [supra, page 12 hereof], i.e., "(d) Whoever, **with intent to extort** from any person, firm, association, or corporation, **any money or other thing of value, transmits in interstate** or foreign commerce **any communication** containing any threat to injure the property **or reputation** of...another...**or any threat to accuse...any other person of a crime,** shall be fined under this title or imprisoned not more than two years, or both" (emphasis added) [see, e.g., hereinafter paragraphs E-16, E-24, & E-56]; Hereinafter paragraphs E-61, E-62, E-64, E-67. E-68, & E-70 through E-81; and, *et al*, CP#1, L. Red Corn, 05/29/98, 14:22:30 and D. Tapp, et seq.

[23] See **Tennessee Code Annotated 40-9-119** and corresponding footnotes [24] & [25]

[24] See hereinafter paragraphs 76 & 77; Footnote [75], esp., **State v. Phillips, 1960,**

162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63; People v. ex rel. Johnson v. Ruthazer, 1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905; Pierce v. Creecy, Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113; Ex parte Morgan, D.C.Cal. 1948, 78 F.Supp. 756, affirmed 175 F.2d 404, certiorari denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed.503; and CP#1, C. Perkins, 11/10/95, 13:11:11, et seq.

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record in [Tennessee], who shall fix a reasonable time to be allowed the prisoner within which to apply for a writ of habeas corpus[25]. When such writ is applied for, **notice thereof, and the time and place of hearing thereon, shall be given to the public prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.**" (emphasis added)

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[25] See hereinafter paragraphs 76 & 77, esp., CP#1, C. Perkins, 11/10/95, 13:11:11, et seq.; "Akers and his attorney were prepared to challenge, by writ of habeas corpus, Akers "fugitive" status and the validity of the charges in Kentucky [see Exhibit "JJ" hereto]. Akers was immediately arrested, however, before the Judge was brought in and Court was even convened. Akers was then remanded to custody until extradited to Fayette County, Kentucky, on October 2, 1995, notwithstanding the best efforts of Akers and his attorneys to resolve/discharge all matters amicably. [see Collective Exhibit "KK"]; and Footnote[75], i.e., "**Interstate extradition** involves a significant...restraint of liberty and, as such, **necessitates a showing of probable cause.**" **Wellington v. State of S.D., D.C.S.D.1976, 413 F.Supp., 151.** (emphasis added) See Also: **Walton v. State, 1977, 566 P.2d 765, 98 Idaho 422**; "**Probable cause** to find that a person to be extradited is a **fugitive from justice** in demanding state is a **condition precedent to valid extradition.**" **Ross v. Hegstrom, 1969, 254 A.2d. 556, 107 Conn. 403** (emphasis added); "In determining whether a party named in a requisition and rendition warrant is a fugitive from justice, **a finding must be made** in substance that a crime is alleged, that the named party committed the crime and fled from the demanding jurisdiction, and **it must appear that accused was within the demanding state when crime was committed** so as to constitute him a fugitive by his commission of crime and his **later flight.**" **Clayton v. Wichael, 1966, 141 N.W.2d 538, 258 Iowa 1037; Wigehert v. Lockhart, 1946, 66 P.2d 988, 114 Colo. 485; Ex parte Foster, 1936, 61 P.2d 37, 60 Okla.Cr. 50**; "**Under** this **[Sec. 2, cl. 2] and Federal Extradition Act, 18 U.S.C.A.** former § 662 [now **§§ 3182, 3195], an extradition is unwarranted unless the accused is a** fugitive from justice, and a '**fugitive from justice**' is a person **who commits a crime within a state and withdraws himself from such jurisdiction**

without waiting to abide the consequences of his act". **Ex parte Montoya, 1943, 135 P.2d 281, 170 Or. 499**. (It is apparent that the Kentucky authorities relied on **Kentucky v. Dennison, 1861, 65 U.S. 66, 24 How. 66, 16 L.Ed. 717**; **Appleyard v. Massachusetts, Mass1906, 27 S.Ct. 122, 203 U.S. 222, 51 L.Ed. 161**; **Ex parte Williams, 1946, 21 N.W.2d, 593, 71 S.D. 95**; **Olson v. Thurston, Me.1978, 393 A.2d 1320**; and, especially, **Com. ex rel. Marshall v. Gedney, 1975, 352 A.2d 528, 237 Pa.Super. 372, affirmed 386 A.2d 942, 478 Pa. 299**, as authorities for Akers' extradition. Those cases, however, do not encompass, ***inter alia***, "**fraud**", "**conspiracy**", and/or "**malice**", which is defined as: "The **intentional** doing of a wrongful act without just cause or excuse, **with an intent to inflict an injury** or under circumstances that the law will imply an evil intent." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998, emphasis added].)

CONSTITUTION OF KENTUCKY

Ky Const § 1. Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ...redress of grievances, bearing arms: "**All men** are, by nature, free and equal, and **have certain inherent and inalienable rights**, among which may be reckoned: **First**: The right of enjoying and **defending their** lives and **liberties**; **Second**: The right of worshipping Almighty God **according to the dictates of their consciences**; **Third**: The right of seeking and pursuing their safety and happiness; **Fourth**: The right of **freely communicating their thoughts and opinions**; **Fifth**: The right of acquiring and **protecting property**; ...**Seventh**: The right to bear arms in defense of themselves..."; (emphasis added)

Ky Const § 2. Absolute and arbitrary power denied: "**Absolute and arbitrary power over** the lives, liberty and property of **freemen exists nowhere in a republic, not even in the largest majority**." (emphasis added)

Ky Const § 3. Men are equal...: "All men, ...are equal; and **no grant of exclusive...privileges shall be made to any man or set of men**..." (emphasis added)

Ky Const § 5. Right to religious freedom: "**No preference shall ever be given by law to any religious sect, society or denomination**; ...**and the civil rights, privileges or capacities of no person shall be** taken away, **or in anywise diminished or enlarged**, on account of his belief or disbelief of

any religious tenet, dogma or teaching. **No human authority shall**, in any case whatever, **control or interfere with the rights of conscience**"; (emphasis added)

Ky Const § 8. Freedom of speech and of the press: "... **every person may freely speak, write and print on any subject**, being responsible for the abuse of that liberty." (emph. added)

Ky Const § 10. Security from search and seizure; conditions of issuance of warrant: "The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizures; and **no warrant shall issue to search any place, or seize any person or thing**, without describing them as nearly as may be, **nor without probable cause** supported by oath or affirmation." (emphasis added)

Ky Const § 12: "No person, **for an indictable offense**, shall be proceeded against criminally by information..., or by leave of court for oppression or misdemeanor in office"; (emphasis added)

Ky Const § 13: "**No person shall**, for the same offense, **be twice put in jeopardy**[26] of his life and limb..."; (emphasis)

Ky Const § 15. Laws to be suspended only by General Assembly: "No power to suspend laws shall be exercised unless by the General Assembly or its authority." (emphasis added)

Ky Const § 16. Right to bail; habeas corpus: "**All prisoners shall be bailable**[27] by sufficient securities, unless for capital offenses when the proof is evident or the presumption is great; **and the privilege of the writ of habeas corpus shall not be suspended** unless when, in case of rebellion or invasion, the public safety may require it." (emphasis added)

Ky Const § 17. Excessive bail or fine, or cruel punishment, prohibited: "**Excessive bail shall not be required**[27], **nor cruel punishment inflicted**." (emphasis added)

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[26] **See also**: **Fifth Amendment, U. S. Constitution** [supra, page 6 hereof]; **Sherley v. Commonwealth, 558 SW(2d) 615 (Ky 1977)**, i.e., "Where

Commonwealth used the **same evidence** of force causing serious physical injury to elevate offense..., defendant was placed in double jeopardy by conviction of first degree assault on the basis of the same physical injury; ...K.R.S. 505.020, 506.010(4)(a), 508.101(1)(a), 510.040(1)(b), (2)" (emphasis added); **Crawley v. Kunzman, 585 SW(2d) 387 (Ky 1979)**, i.e., "[R]ight of appeal is not [an] adequate remedy against double jeopardy. U.S.C.A. Const. Amend. 5" (emphasis added); and **Klee v. Lair, 621 SW(2d) 892, (Ky 1981)**, i.e., "[D]efendant's having been found guilty of **lesser included offense**...would **prohibit** him from being tried a second time for major offense." (emphasis added)

[27] See hereinafter paragraphs E-83, E-90, E-98, E-99, E-111, E-112 through E-114, E-119, & E-121. **See also, Commonwealth v. Hardin, S.W.2d 498 (1958)**, i.e., "What is the purpose of an appeal in any criminal case? It is to avoid the consequences of conviction. So it is with this appeal. It differs from other appeals, only as to grounds presented for reversal and the manner of presentation, not in purpose. **It is therefore the opinion of this Court that the defendant was entitled to bond pending appeal and the law is so certified**." (emph. added); **Kentucky Criminal Practice § 11.09 Modification or revocation of bail**, i.e., "In **Marcum v Broughton**, the Court held that after bond has been set by the court, the bond may not be increased or revoked without a change in the defendant's status. The Court stated that **increasing the bond without any reason would be an arbitrary action in violation of § 2 of the Constitution of Kentucky**" (emphasis added); and **Kentucky Criminal Practice § 11.10 Termination of right to bail by operation of law**, i.e., "The setting aside of the judgement of conviction and remanding for a new trial would place the defendant in the same position as he was prior to conviction, thus raising a good ground for reducing the amount of the bail to the pre-conviction level."

Ky Const § 19 (1): "No **ex post facto** law, ...shall be enacted"[28]; (emphasis added)

Ky Const § 24: "**Emigration** from the State **shall not be prohibited**";[29] (emphasis added)

Ky Const § 26: "To guard against transgression of the high powers we have delegated[30], We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**."[30] (emphasis added)

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[28] See also: **ARTICLE I-SECTION 9**, U.S. Constitution [supra, page 6 hereof],

i.e., "[3.] No bill of attainer or ***ex post facto*** **law** shall be passed." (emph. added) and footnote [1] thereto, i.e., "**Ex post facto law" defined**: "A law passed **after the occurrence of a fact or commission of an act**, which retrospectively changes the legal consequences or relations of such fact or deed." "A law is **unconstitutionally "ex post facto"** if it deprives a defendant of a defense to criminal liability that he had prior to enactment of the law. State v. Rogers, Ohio Com.Pl., 346 N.E.2d 352, 361..." (emphasis added); and hereinafter paragraphs E-4, E-12, E-54, E-98, & E-117, ***inter alia***.

[29] **See also**: **ARTICLE I-SECTION 9**, U.S. Constitution [supra, page 5 hereof], i.e., "[1.] The **migration** or importation of such persons as any of the states ...shall think proper to admit, **shall not be prohibited**..." (emphasis added); **ARTICLE IV-SECTION 2**, U.S. Constitution [supra, page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **U.S. Const. Amend. 14** [supra, page 10 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emphasis added); **ARTICLE 1, SECTION 8, Constitution of Tennessee** [supra, page 18 hereof], i.e., "That **no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges**, outlawed, **or exiled or in any manner destroyed or deprived of his life, liberty, or property, but by the judgement of his peers or the law of the land**" (emphasis added); and hereinafter paragraphs E-47, E-50(g), E-51 through E-55, & E-59.

[30] **These very same concerns, and safeguards against them**, were addressed by United States Supreme Court Justices Douglas & Marshall in landmark decision **North Carolina v. Pearce, 89 S.Ct. 2089 (1969)** [supra, page 6 hereof]. **See also**: **801 SW(2d) 321 (Ky 1990), Ingram v Commonwealth**, i.e., "**The Kentucky Constitution is superordinate to legislative intent**..." (emphasis added)

KENTUCKY REVISED STATUTES

403.715 Interpretation of KRS 403.715 to 403.785 by court: "KRS 403.715 to 403.785 shall be interpreted by the courts of the Commonwealth to effectuate the following legislative purposes: (1) To allow persons who are the victims of domestic violence and abuse to obtain short-term protection against further domestic violence and abuse in order that their lives will be as secure and as uninterrupted as possible;"

403.720 Definitions for KRS 403.715 to 403.785: "As used in KRS 403.715 to 403.785: (1) '**Domestic violence** and abuse' **means physical injury, serious physical injury**, sexual abuse, **or assault between family members** or members of an unmarried couple; (2) '**Family member**' **means a spouse**, a parent, a child, a stepchild, or any other person related by consanguinity or affinity..." (emphasis added)

403.725 Petition, who may file, protective orders: "(1) Any family member or member of an unmaried couple who is a resident of this state or who...fled to this state to escape domestic violence or abuse may file a verified petition in the District Court of the county in which he resides."

403.735 Review by court; access to emergency protective orders; local protocol in domestic violence matters; time at which orders of protection take effect: "(1) Upon filing of a petition, as provided for in KRS.725, the court, after review of the petition and determining that domestic violence and abuse exists, and without a jury, shall utilize one of the alternatives provided for in KRS 403.740 or 403.745."

403.740 Emergency protective order: "(1) If, upon review of the petition, as provided for in KRS 403.735, the court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, ex parte, an emergency protective order: (a) Restraining the adverse party from...contact or communication with the petitioner except as directed by the court; (b) Restraining the adverse party from committing further acts of domestic violence and abuse; (c) Restraining the adverse party from disposing of or damaging any property of the parties; (d) Directing the adverse party to vacate the residence shared by the parties to the action; ...or (f) Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse; or any combination thereof."

403.745 Hearing: "(3) The summons, together with a copy of the order fixing the date of the hearing and a copy of the

petition, **shall be personally served upon the adverse party**... in the manner and by the persons authorized to serve subpoenas under...Rule 45.03 of the Rules of Civil Procedure." (emphasis added)

403.750 Court Orders: "(1) Following the hearing provided for under KRS 403.745, the court, if it finds, from a preponderance of the evidence, that an act or acts of domestic violence and abuse have occurred and may again occur, may: (a) Restrain the adverse party from committing further acts of domestic violence and abuse; (b) Restrain the adverse party from disposing of or damaging any of the property of the parties; (c) Direct the adverse party to vacate the residence shared by the parties to the action; (f) Direct that either or both parties receive counseling services in the community; (g) Enter other such orders as the court believes will be of assistance in eliminating future acts of domestic violence and abuse; and (2) **Any order entered pursuant to this section shall be in effect for a period of time**, fixed by the court, **not to exceed one year**."[31] (emphasis added)

403.7505 (2): "(a) **'Domestic violence'** is a pattern of coercive control which **includes physical**, sexual, psychological, and environmental **abuse, and is considered criminal conduct;**" (emphasis added)

403.760 Contempt of court: "(1) **Violation of the terms or conditions of an order under the provisions of KRS 403.740 or 403.750**, whether an emergency protective order, or an order following hearing, after service of the order on the respondent, or notice to the respondent, **shall constitute contempt of court**; (5) **Civil proceedings and criminal proceedings are mutually-exclusive. Once either has been initiated, the other may not be undertaken regardless of the outcome of the original proceeding**. (emphasis added)

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[31] Note: The herein provisions of KRS 403.750 were in effect **at all times relevant to Akers' case**, but were subsequently revised on 7-15-96 (see 1996 c 99, § 2) See also: Fourteenth Amendment, U.S. Constitution [supra, page 10 hereof] and Ky Const § 19 (1) [supra, page 28 hereof]; and K.R.S. 505. 020(1)(a)& (c) [page 16 hereof], i.e., "[w]hen a **single course of conduct** of a defendant may establish the commission of more than one offense, he may be prosecuted for

each such offense. **He may not, however, be convicted of more than one offense when**: (a) **One offense is included in the other**...; or (b) Inconsistent findings of fact are required to establish the commission of the offenses; or (c) **The offense is designed to prohibit a continuing course of conduct** and the defendant's conduct was uninterrupted by legal process." (emphasis added)

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403.780 Testimony not admissible in criminal proceeding: "**Testimony offered by an adverse party** in a hearing held pursuant to the provisions of 403.745 **shall not be admissible in any criminal proceeding involving the same parties**." (emphasis added)

500.050 Time limitations: "(1) Unless otherwise expressly provided, the prosecution of **a felony is not subject to a period of limitation** and may be commenced at any time. (2) Except as otherwise specifically provided, the **prosecution of an offense other than a felony must be commenced within one year after it is committed**." (emphasis added)

500.060 Territorial applicability: "(1) **Except as otherwise provided in this section**, a person may be convicted under the law of [Kentucky] of an offense committed by his own conduct ...when: (a) Either the conduct or the result which is an element of the offense occurs within [Kentucky]; (2) **Subsection (1)(a) does not apply if causing a particular result is an element of an offense and the result is caused by conduct occurring outside [Kentucky]** [and] would not constitute and offense if the result had occurred [in the other state] - unless the actor intentionally or knowingly caused the result in [Kentucky]. (emphasis and interpretation/clarification added)[32]

500.070 Burden of proof; defenses: "(2) **No Court can require notice of a defense prior to trial time**." (emph. added)

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[32] See also: **COMMENTARY, Kentucky Crime Commission/LRC, 1974**: "The provisions of this statute, initially proposed in the Model Penal Code, seek to deal with the power of a state to prosecute criminal conduct that has an interstate character. The common law rule has been stated as follows: At common law a prosecution could not be brought except for an offense of the 'gist' of which occurred within the prosecuting jurisdiction. ...Subsection [K.R.S.

505.080(1)](2) seeks to minimize the difficulty with imposing penal sanctions on conduct that cause a result that is criminal in [Kentucky] **but noncriminal in the state in which the conduct occurs**. The justification for this provision was best explained by the drafter of the Proposed Delaware Code:" ..."While the intention of the section is to extend Delaware's jurisdictions as widely as it may constitutionally be extended, **we believe that it would be wrong to attempt to cover conduct which unintentionally produces a result in Delaware, at least when the result would have been lawful had it occurred where it was intended to occur**. Proposed Delaware Penal Code § 8, Commentary (1967)"; "**Vagueness Doctrine**" defined: "Under this doctrine, **a law, (e.g., criminal statute) which does not fairly inform an ordinary person of what is commanded or prohibited is unconstitutional as violative of due process**. The doctrine originates in the due process clause of the Fourteenth Amendment, and is basis for striking down..." (continued, page 32 hereof)

500.080 Definitions for Kentucky Penal Code: "As used in the Kentucky Penal Code, unless the context otherwise requires: (3) **'Dangerous instrument' means any instrument**, including parts of the human body when a serious physical injury is a result of the use of that part of the human body...**which, under the circumstances in which it is used, attempted to be used, or threatened to be used is readily capable of causing death or serious physical injury**; (5) 'Felony' means an offense for which a sentence to a term of imprisonment of at least one year in the custody of the Department of Corrections may be imposed; (7) 'He' means any natural person and, where relevant, a corporation or an unincorporated association; (13) **'Physical injury' means substantial physical pain or any impairment of physical condition**; (15) **'Serious physical injury' means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, or prolonged impairment of the function of any bodily organ.**" (emphasis added)

505.010 Entrapment; "A person is not guilty of an offense arising out of a proscribed conduct **when**: (a) **He was induced or encouraged** to engage in that conduct by a public servant or **by a person acting in cooperation with a public servant seeking to obtain evidence against him for the purpose**

of a criminal prosecution; and (b) At the time of the inducement or encouragement, **he was not otherwise disposed to engage in such conduct.** (emphasis added)

505.020 Prosecution for multiple offenses; K.R.S. Title 50-Kentucky Penal Code: "(1) When a **single course of conduct** of a defendant may establish the commission of more than one offense, he may be prosecuted for each such offense. **He may not, however, be convicted of more than one offense when:** (a)

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[32] "**Vagueness Doctrine**" (continued from page 31 hereof): "...legislation which contains **insufficient warning of what conduct is unlawful**. McCrary v. State, Ala.Crim.App., 429 So.2d 1121, 1123. **It requires that penal statutes give notice to [an] ordinary person of what is prohibited and provide definite standards to** guide discretionary actions of police officers so as to **prevent arbitrary and discriminatory law enforcement**. Porta v. Mayor, City of Omaha, Neb., D.C.Neb., 593 F.Supp. 863, 865; **See also Vague**; **Void for vagueness doctrine**: "A law which is so obscure in its promulgation that a reasonable person could not determine from a reading what the law purports to command or prohibit is violative of due process. The doctrine means that criminal responsibility should not attach where on e could not reasonably understand that his contemplated conduct is proscribed. U.S. v. National Dairy Products Corp., Mo., 83 S.Ct. 594, 598, 372 U.S. 29, 91 L.Ed.2d 561. Also, the First Amendment requires special clarity so that protected expression will not be chilled or suppressed." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998, (emphasis added)]

One offense is included in the other, as defined in subsection (2); or (b) Inconsistent findings of fact are required to establish the commission of the offenses; **or (c) The offense is designed to prohibit a continuing course of conduct and the defendant's conduct was uninterrupted by legal process,** unless the law expressly provides that specific periods of such conduct constitute separate offenses."[33] (emphasis added)

505.040 Effect of former prosecution for different offense[34]: "Although a prosecution is for a violation of a different statutory provision from a former prosecution..., **it is barred by the former prosecution under the following circumstances: (1) The former prosecution resulted in...a**

determination that there was insufficient evidence to warrant

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[33] See also: **801 SW(2d) 321 (Ky 1990), Ingram v Commonwealth**: "**The Kentucky Constitution is superordinate to legislative intent**, and the view of double jeopardy in Ky Const § 13 is broader than the included offense approach of KRS 505.020; therefore, the Commonwealth is permitted to carve out of a single episode the most serious offense, **but not to punish a single episode as multiple offenses**, so that **in a case where the defendant has committed a single act or impulse** constituting one offense, and dual offenses are constitutionally impermissible." [Akers does hereby acknowledge that the Ingram case has been subsequently overruled by the Kentucky Supreme Court, on August 29, 1996, in **Commonwealth v Burge**, 947 SW(2d) 805 (Ky 1996). The **Burge** decision would, however, amount to an "***ex post facto***" ruling in view of its time-frame in relation to Akers' case and, as such, its application thereto would be violative of the Fourteenth Amendment to the United States Constitution, as well as Ky Const § 19] (emphasis added)

[34] See also: **COMMENTARY, Kentucky Crime Commission/LRC, 1974**: "Following an aquittal, a conviction, or a determination by the court that there was insufficient evidence to warrant a conviction, **subsequent prosecution is barred** by subsection [505.040](1)(b) **if it is for an offense involving the same conduct as a former prosecution**. For example: D is charged with committing breach of the peace by assaulting V, tried for this offense, and convicted. He is then tried for assault and battery of V. The former prosecution would serve to bar the subsequent prosecution under subsection (1)(b). Subsection (2) of this section parallels a provision in KRS 505.030 and provides for the doctrine of res judicata where the subsequent prosecution is for a different offense. The manner in which this provision is to operate is demonstrated well by an example used in the Proposed Delaware Criminal Code: As an example of how this would work, we may take the case of an injury caused by allegedly reckless driving by D. Suppose that D is first charged with reckless driving, and the case resulted that, under the circumstances, D was not reckless. If he is later charged with manslaughter, which requires proof of recklessness, he would be **entitled to an acquittal**. Proposed Delaware Criminal Code § 12, Commentary at 20 (1967)" (emphasis added)

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a conviction, and the subsequent prosecution is for: (a) An offense of which the defendant could have been convicted at the first prosecution; or (b) **An offense involving the same conduct** as the first prosecution requires proof of a fact not required in the other prosecution or unless the offense was not

consummated when the former prosecution began; **or (2) The former prosecution was terminated by a final order or judgement which has not subsequently been set aside and which required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution**; or (3) The former prosecution was improperly terminated, as that term is used in subsection (4) of KRS 505.030, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated." (emphasis added)

505.030 (4) [see 505.040 (3)]: "The former prosecution was improperly terminated **after the first witness was sworn**[35] but before findings were rendered by the trier of fact." (emphasis added)

508.010 Assault in the first degree: "(1) A person is guilty of assault in the first degree when: (a) He **intentionally causes serious physical injury to another person by means of a deadly weapon or dangerous instrument**[36]; **or** (b) Under...

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[35] See hereinafter paragragraphs E-34 & E-38.

[36] **See also**: **502 SW(2d) 60 (Ky 1973), Wills v. Commonwealth**: "Notwithstanding claim that instruction of malicious striking and wounding with intent to kill should not have been given because it was not proven that defendant had used a deadly weapon, other than his **fist which has been held not to be a deadly weapon**, where defendant was not convicted upon charge of striking and wounding but upon lesser charge of assault and battery, instruction was not prejudicial to defendant" (emph. added); **321 SW(2d) 253 (Ky 1959), Charles v Commonwealth**: "The **fist has been held not to be a deadly weapon**" (emphasis added); and **248 SW(2d) 911 (Ky 1952), Reed v Commonwealth**: "Hands and feet **are not deadly weapons**. (Annotation from former KRS 435.170)" (emphasis added); and **695 SW(2d) 863 (Ky 1985), Roney v Commonwealth**: "**A human fist is not a 'dangerous instrument' within the meaning of first-degree assault statute, KRS 508.010**; in light of the ambiguity of the legislature's intent, rule of lenity is followed and **it was error to instruct the jury to convict an accused if it believed fists were dangerous instruments**." (emphasis added) Akers does hereby acknowedge that the **Roney** case was subsequently overruled by the Kentucky Court of Appeals in **Johnson v. Commonwealth, 926 SW(2d) 463 (Ky App 1996)**. However, as with the hereinabove **Commonwealth v Burge**, [see footnote 36, page 30 hereof], the **Johnson** decision would amount to an "***ex post facto***" ruling in view its timeframe in relation to Akers' case and, as such, its application thereto would

be in violation of U.S. Const. Amend. 14 [supra, page 10 hereof] and Ky Const § 19 [supra, page 26 hereof]

circumstances manifesting extreme indifference to the value of **human life, he engages in conduct which creates a grave risk of death**[37] **to another and thereby causes serious physical injury** to another person. (2) Assault in the first degree is a Class B felony." (emphasis added)

508.030 Assault in the fourth degree: "(1) A person is guilty of assault in the fourth degree when: (a) He **intentionally or wantonly causes physical injury** to another person; **or (b) With recklessness he causes physical injury** to another person **by means of a deadly weapon or a dangerous instrument**[36]. (2) Assault in the fourth degree is **a Class A misdemeanor**." (emph. added)

508.040 Assault under extreme emotional disturbance: "(1) In any prosecution under KRS 508.010, 508.020, or 508.030, in which intentionally causing physical injury or serious physical injury is an element of the offense, a defendant may establish in mitigation that he acted under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of KRS 507.020. (2) An assault committed under influence of extreme emotional disturbance is: (a) A Class D felony when it would constitute an assault in the first degree or an assault in the second degree if not committed under the influence of extreme emotional disturbance; or (b) A Class B misdemeanor when it would constitute an assault in the fourth degree if not committed under the influence of extreme emotional disturbance;"

508.130 Definitions for KRS 508.130 to 508.150: "As used in KRS 508.130 to 508.150, unless the context requires otherwise: (1)(a) **To 'stalk' means to engage in an intentional course of conduct**: 1. Directed at a specific person or persons; 2. Which seriously alarms , annoys, intimidates, or harasses the person or persons; **and** 3. **Which serves no legitimate purpose**. (b) The course of conduct shall be that which would cause a

reasonable person to suffer substantial mental distress. (2) 'Course of conduct' means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. **Constitu-tionally-protected activity is not included within the meaning of 'course of conduct'**. If the defendant claims that he was engaged in constitutionally-protected activity, **the court** shall determine the validity of that claim **as a matter of law** and...**shall exclude that activity from the evidence**." (emphasis added)

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[37] **See also**: **719 SW(2d) 730 (Ky 1986), Souder v. Commonwealth**. "Where there is no evidence to prove that...victim is in danger of death..., **the evidence is insufficient to sustain a conviction for first degree assault, which requires the infliction of 'serious physical injury'**." (emphasis added)

508.140 Stalking in the first degree: "(1) A person is guilty of stalking in the first degree, (a) When he **intentionally**: 1. Stalks another person; **and 2. Makes an explicit or implicit threat with intent to place that person in reasonable fear of**: a. Sexual contact as defined in KRS 510.010; **or b. Serious physical injury; or c. Death; and (b) 1. A protective order or other judicial order as provided in KRS Chapter 403 has been issued by the court to protect the same victim** or victims **and the defendant has been served**[38] **with the order or summons or has been given actual notice**; or 2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or...4. The act or acts were committed while the defendant had a deadly weapon on or about his person. (2) **Stalking in the first degree is a Class D felony**." (emphasis added)

508.150 Stalking in the second degree: "(1) A person is guilty of stalking in the second degree when he **intentionally**: (a) Stalks another person; **and (b) Makes an explicit or implicit threat with intent** to place that person in reasonable fear of: 1. Sexual contact as defined in KRS 510.010; 2. Physical injury; or

3. Death. (2) **Stalking in the second degree is a Class A misdemeanor.**" (emphasis added)

509.020 Unlawful imprisonment in the first degree: "(1) A person is guilty of unlawful imprisonment in the first degree when he **knowingly and unlawfully restrains another person under circumstances which expose that person to risk of serious physical injury**. (2) Unlawful imprisonment in the first degree is a Class D felony." (emphasis added)

509.040 Kidnapping: "(1) A person is guilty of kidnapping when he **unlawfully restrains another person** and when his intent is: (b) **To accomplish or to advance the commission of a felony**; (2) Kidnapping is a Class B felony when the victim is released in a safe place prior to trial, except as provided in this section." (emphasis added)

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[38] See also: U.S. v. Casciano, 927 F.Supp. 54 N.D.N.Y. 1996, i.e., "...12. **Due process clause requires that notice be reasonably calculated, under all circumstances, to apprise interested parties** of penalty an action and afford them an opportunity to present their objections. U.S.C.A. Const. Amend. 5." [i.e., "No person shall be held to answer for...infamous crime, unless on a presentment or indictment..., **nor shall any person be subject for the same offence to be twice put in jeopardy** of life or limb"; ...**nor be deprived of** ...**liberty**, or property, **without due process of law**"; (emphasis added)

514.030 Theft by unlawful taking or disposition: "(1) Except as otherwise provided in KRS 217.181 or 218A.1418, **a person is guilty of theft by unlawful taking or disposition when he unlawfully: (a) Takes or exercises control over moveable property of another with intent to deprive him thereof**; (2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the **value of the property is three hundred dollars or more,** or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D Felony.**" (emphasis added)

514.080 Theft by extortion: "(1) A person is guilty of theft by extortion when he intentionally obtains the property of

another **by threatening to**: (b) **Accuse anyone of a criminal offense**; or (c) **To expose a secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute; or** (d) **Use wrongfully his position as a public officer** or servant or employee by performing some act within or related to his official duty, **either express or implied, in a manner affecting some person adversely**; (3) Theft by extortion is a Class A misdemeanor unless the value of the **property obtained is three hundred dollars or more**, in which case it is a **Class D felony**." (emphasis added)

514.110 Receiving stolen property: "(1) A person is guilty of receiving stolen property when he receives, retains, or disposes of moveable property of another knowing that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner. (2) The possession by any person of any recently stolen property shall be ***prima facie*** evidence that such person knew that such property was stolen. (3) Receiving stolen property is a Class A misdemeanor unless the value of the property is three hundred dollars or more, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D felony**."

516.030 Forgery in the second degree: "(1) A person is guilty of forgery in the second degree when, **with intent to defraud, deceive**, or injure another, **he falsely** makes, **completes, or alters a written instrument** which is or purports to be or **which is calculated to become or to represent when completed**: (a) a deed, will, or codicil, **contract, assignment**, commercial instrument, credit or **other instrument which does or may evidence**, create, transfer, terminate **or otherwise affect a legal right**, interest, obligation, or status; **or (b) A public record or an instrument filed** or required or authorized by law to be filed in or **with a public office or public employee**; (2) Forgery in the second degree is a Class D felony." (emph. added)

523.020 Perjury in the first degree: "(1) A person is guilty of perjury in the first degree when he makes a material

false statement, which he does not believe, in any official proceeding under oath required or authorized by law; (3) Perjury in the first degree is a Class D felony."

523.050 Inconsistent statements: "(1) When a person has made inconsistent statements under oath, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single charge alleging in the alternative that one or the other was not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true."

524.100 Tampering with physical evidence: "(1) A person is guilty of tampering with physical evidence when, believing that an official proceeding is pending or may be instituted, he: (a) Destroys, mutilates, conceals, removes, or alters physical evidence which he believes is about to be produced or used in the official proceeding with intent to impair its verity or availability in the official proceeding; or (b) Fabricates any physical evidence with intent that it be introduced in the official proceeding or offers any physical evidence, knowing it to be fabricated or altered; (2) Tampering with physical evidence is a Class D felony."

KENTUCKY RULES OF EVIDENCE

K.R.E. 101. SCOPE: "**These rules shall govern all proceedings in the courts of the Commonwealth of Kentucky,** to the extent and with the exceptions stated in KRE 1101." (emphasis added)

K.R.E. 102. PURPOSE AND CONSTRUCTION: "These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense, and promotion of growth and development of the law of evidence **to the end that the truth may be ascertained and proceedings justly determined.**" (emphasis added)

K.R.E. 103. RULINGS ON EVIDENCE: "**(a) Effect of Erroneous Ruling.** Error may not be predicated upon a ruling which admits or excludes evidence **unless the substantial right of the party is affected; and (1)** ***Objection.*** **In case the ruling**

is one admitting evidence, a timely objection or motion to strike appears of record, and upon request of the court stating the specific ground of objection, if the specific ground was not apparent from the context; or (2) *Offer of Proof.* In...

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case the ruling is one excluding evidence, upon request of the examining attorney, the witness may make a specific offer of his answer to the question. (c) **Hearing of Jury. In jury cases, proceedings shall be conducted**, to the extent practicable, **so as to prevent inadmissible evidence from being suggested to the jury by any means**, such as making statements or offers of proof or asking questions in the hearing of the jury." (emph. added)

K.R.E. 105. LIMITED ADMISSIBILITY: "(a) When evidence which is admissible as to one (1) party or for one (1) purpose but not admissible as to another pary or for another purpose is admitted, **the court**, upon request, **shall restrict the evidence to its proper scope and admonish the jury accordingly.**" (emphasis added)

K.R.E. 106. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS: "When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought to be considered contemporaneously with it."

K.R.E. 107. MISCELLANEOUS PROVISIONS: "**(b) Effective date**: The Kentucky Rules of Evidence shall take effect on the first day of July, 1992. **They shall apply to all** civil and **criminal actions and proceedings** originally brought on for trial after that date and to pretrial motions or matters originally presented to the court for decision upon or after that date if a determination of such motions or matters requires application of evidence principles; provided, however, that **no evidence shall be admitted against a criminal defendant in proof of a crime committed prior to July 1, 1992**, unless that evidence would have been admissible under evidence principle in existence prior to adoption of these rules."[39] (emphasis added)

K.R.E. 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS: "(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is...(2) Capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably be questioned. ...(d) **When Mandatory. A court shall take judicial notice** if requested by a party and supplied with the necessary information. (f) **Time of taking notice.** Judicial notice may be taken **at any stage of the proceeding.** (g) **Instructing the Jury. The court shall instruct the jury** to accept as conclusive any fact judicially noticed. (emphasis added)

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[39] **A complete copy of these prior rules will be requested in discovery herein.**

K.R.E. 401. DEFINITION OF "RELEVANT EVIDENCE": "Relevant evidence" means evidence having any tendancy to make the existence of any fact that is of consequence to the determination of the action more probable or **less probable than it would be without the evidence."** (emphasis added)

K.R.E. 402. "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States and the Commonwealth of Kentucky, by the acts of the General Assembly of the Commonwealth of Kentucky, by these rules, or by other rules adopted by the Supreme Court of Kentucky. (emphasis added)

K.R.E. 403. EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME: "Although relevant, evidence may be excluded if its probative value is **substantially outweighed by the danger of undue prejudice, confusion of the issues, or misleading the jury...**" (emphasis added)

K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES: "(a) Character Evidence Generally: Evidence of a persons character is **not admissible** for

the purpose of proving action in conformity therewith on a particular occasion, except: (1) *Character of accused*: Evidence of a pertinent trait of character or of the general moral character **offered by the accused**...; (2) *Character of Victim Generally*: Evidence of a pertinent trait of character of the victim of the crime **offered by the accused**...; **(b) Other Crimes, Wrongs, or Acts**. Evidence of other crimes, wrongs, or acts **is not admissible** to prove the character of a person in order to show action in conformity therewith. ...**(c) Notice Requirement**. In a criminal case, if the prosecution intends to introduce evidence pursuant to subdivision (b) of this rule as a part of its case in chief, it **shall give reasonable pretrial notice to the defendant** of its **intention** to offer such evidence. **Upon failure of the prosecution to give such notice the court may** exclude the evidence offered under subdivision (b) or for cause shown may excuse the failure to give such notice and **grant the defendant a continuance or such other remedy as necessary to avoid unfair prejudice caused by such failure.**" (emphasis added)

K.R.E. 405. METHODS OF PROVING CHARACTER: "**(a) Reputation or opinion.** In all cases in which evidence or a trait of character of a person is admissible, proof **may be made** by testimony as to general reputation in the community or by testimony **in the form of opinion**. **(c) Specific Instances of Conduct**. In cases in which character of a person is an essential element of a charge, claim, or defense, **proof may also be made of specific incidents in that person's conduct.**" (emphasis added)

K.R.E. 504. HUSBAND-WIFE PRIVILEGE: "**(a) Spousal Testimony**. ...A person has a **privilege** to prevent his or her spouse from testifying against the party as to events occurring after their marriage. **(b) Marital Communications**. An individual has a right to refuse to testify and **to prevent another from testifying to any confidential communication** made by the individual to his or her spouse **during their marriage**. ...A communication is confidential if it is made **privately by an**

individual to his or her spouse and is not intended for disclosure to any other person." (emphasis added)

K.R.E. 602. LACK OF PERSONAL KNOWLEDGE. "A witness may not testify to a matter unless evidence is introduced to support a finding that the witness has **personal knowledge** of the matter." (emphasis added)

K.R.E. 1101. APPLICABILITY OF RULES. "**(a) Courts.** These rules apply to **all the courts of this Commonwealth in the actions, cases, and proceedings** and to the extent hereinafter set forth. ...**(c) Rules on Privileges.** The rules with respect to **privileges apply at all stages of all actions, cases, and proceedings.**" (emphasis added)

D. CITES TO THE RECORD

1. The civil action in support of which this "MEMORANDUM & MEMORANDUM OF LAW" is being filed revolves around the lengthy (twenty-six year) marriage, and eventual divorce, of Plaintiff James G. Akers and Defendant Carolyn P. Bishop. It does further encompass, beginning in May of 1994 and continuing through July 7, 2000, **in excess of forty-one (41) compelled court appearances** by Akers in the Domestic Relations/Domestic Violence Divisions of Fayette [Kentucky] District, Fayette [Kentucky] Circuit Court, and Nashville/Davidson County [Tennessee] General Sessions & Circuit Courts, and includes **two (2) separate Pre-trial Conferences**; at least **five (5) separate Arraignments** in...

Fayette District Court; **two (2) Extradition Hearings** in the Nashville/Davidson County [Tennessee] General Sessions Court; **two (2) separate three-day Trials** in Fayette [Kentucky] Circuit Court; as well as **three (3) distinctly separate actions** in the Kentucky Court of Appeals by Akers, **two (2) of which resulted in "reversal"**. Consequently, the "state court record" necessarily referred to herein, in relevant part, is contained within **literally volumes** of documentation, audio/video recordings, and transcripts which, in their entirety, would be

impractical, **if not virtually impossible**, to incorporate herewith in any form other than "by reference only". Therefore, all the hereinafter references to the "state court record" shall refer only to the "sworn witness" (or other such principal) quoted herein; tape number ("TT" for Trial Tape, "CP" for Certified Portions of Hearings, etc.); the date of recording of that tape; and the approximate time of the testimony and/or proceeding (see "APPENDIX" bound herewith for enumerations noted "Incorporated by reference only"). All additional hereinafter references and/or citations, including quoted excerpts of transcripts/audio recordings of proceedings within the Domestic Relations/Domestic Violence Divisions of Fayette [Kentucky] District Court, the Fayette [Kentucky] Grand Jury, and documentation in support of the herewith contemporaneously-filed civil action, are as referred to within the text hereof in alpha-numeric order, and appended hereto in the form of "EXHIBITS" [see "APPENDIX"].

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E. STATEMENT OF THE CASE

INTRODUCTION

1. As hereinbefore stated, the criminal prosecutions which give rise to the accompanying civil action filed concurrently herewith revolve around the lengthy (twenty-six year) marriage, and eventual divorce, of Plaintiff James G. Akers (hereinafter "Akers") and Carolyn P. Bishop (hereinafter "Bishop"), and allegations that Akers intentionally caused "serious physical injury" to Bishop on, or about May 4, 1994, with his hands, and then "stalked" her from November of 1994 until May of 1995. [see Indictment No. 95-CR-984, Exhibit "A"]

2. Notwithstanding Bishop's **obvious** violations of, ***inter alia***, **Title 18 U.S.C. §§ 873, 875, 876, 1341, 1503, 1512(b)(2) (B) & Title 42 U.S.C. §§ 1983 & 1985** of the **United States Codes**; **and K.R.S. 514.030, 514.080, 523.020, 523.050, & 524.100** of the **Kentucky Revised Statutes**; together with Bishop's exploitation and/or abuse of the criminal justice system of the

Commonwealth of Kentucky in the implementation and concealment thereof; **the facts** with respect to those events preceding, contemporaneous with, and subsequent to, events of May 4, 1994, are as set forth in the Affidavits of the Plaintiff James G. Akers, Deborah L. Harvil, Woodsie E. Akers, Alan P. Akers, A. Wayne Akers, Stacy B. Akers, Beaulahvene Brown, Darryl Brown, Charlotte S. Kirby, and Dennis R. Akers, all of which such Affidavits are appended hereto as Exhibits "B" through "K", respectively. The facts...

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contained therein are **wholly-supported by the "state court record"** in Akers' case(s) more particularly depicted as [Fayette District Court] "94-D-00396-001" together with [Fayette Circuit Court] "Indictment Number 95-CR-984", and are supplemented and/summarized as hereinafter follows:

BACKGROUND FACTS

3. Akers and Bishop first met on May 23, 1967, near Jenny Wiley State Park near Prestonsburg, Floyd County, Kentucky.

4. Having dated on a regular basis over the succeeding seventeen months; on October 19, 1968, Akers and Bishop entered into a **public contract** of marriage at Prater Memorial Methodist Church in Salyersville, Kentucky, **specifically conditioned** upon mutual covenants and promises, ***inter alia***, to: "forsaking all others, to love and honor"; "to have and to hold"; "in sickness and in health"; "in poverty and in wealth"; "'til death do [they] part". **Additionally**, Akers and Bishop agreed that, as a "blueprint" for their marriage, [they] would respect **all** of those principles set forth in I Corinthians-Chapter 7 [King James Version], i.e., ***inter alia***, as follows:

> "2. Nevertheless, because of sexual immorality, let each man have his own wife, and let each wife have her own husband.
>
> 3. Let the husband render unto his wife the

affection due her, and likewise also the wife to her husband.

5. Do not deprive one another except with consent for a time, that you may give yourselves to fasting and...

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prayer; and come together again so that Satan does not tempt you because of your lack of self-control.

10. Now to the married I command, yet not I but the Lord: A wife is not to depart from her husband.

11. But and if she depart, let her remain unmarried or be reconciled with her husband. And a husband is not to divorce his wife.

37. A wife is bound by the law as long as her husband lives; but if her husband dies, she is at liberty to be married to whom she wishes, only in the lord."[40]

5. Akers and Bishop are the natural parents of two sons: Anthony Wayne Akers (hereinafter "Wayne"), born August 5, 1969; and Alan Patrick Akers (hereinafter "Alan"), born June 18, 1974.

6. Akers and Bishop are the natural grandparents of three grandchildren: Megan A. Akers (hereinafter "Megan"), born April 9, 1989; Shanan N. Akers (hereinafter "Shanan"), born July 31, 1990; & A. Shane Akers (hereinafter "Shane"), born May 1, 1992.

7. During their marriage, Akers and Bishop consecutively maintained residences in: Prestonsburg, Kentucky; Lexington, Kentucky; Nashville, Tennessee; Knoxville, Tennessee; and Brownsburg, Indiana.

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[40] Admittedly, "marriage contracts" do not appear to be enforceable under Kentucky law, notwithstanding provisions of **ARTICLE I-SECTION 10 [1.]**, U.S. Constitution [supra, page 6 hereof, i.e., "**No state shall...pass any** bill of attainer, ***ex post facto*** **law** <u>**or**</u> **law impairing the obligation of contracts**" (emphasis added)] and **Ky Const § 19 (1)** [supra, page 26 hereof, i.e., "**No** <u>**ex**</u>

post facto law, ...shall be enacted" (emphasis added)]. Nonetheless, these facts, when coupled with those facts in hereinafter paragraphs E-5 thru E-9, E-19 thru E-21, E-28, E-29(d) & (e), E-31 thru E-34, E-38, E-45 thru E-47, E-50, E-56, E-62, & E-64, ***inter alia***, **cannot be ignored** as the single most compelling motivation for Akers' conduct which eventually resulted in charges of "stalking".

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8. In September of 1978, Akers began to alert Bishop that she was developing a "hump" in the cervical area of her neck and to caution her about her "poor posture" as the suspected cause.

9. At some time during the month of July, 1989, Bishop vowed to members of Akers' family that: "If Gorden ever goes out on **me, I will fix him!**"

10. (a) Being completely unaware of Bishop's threat in hereinabove paragraph E-9, on May 31, 1991, Akers apologetically informed Bishop of an event during the time he was working in Dallas, Texas, in November of 1981, during which he became intimate with another woman but refrained from engaging in sexual intercourse with that woman but; (b) Bishop became furious with Akers and; (c) yelled: **Gorden!, why were you in that situation in the first place!**"

11. In June of 1984, Bishop began complaining to Akers and numerous family members that she was experiencing severe pain in her neck and back and that her work at a bank seemed "to make it worse". [see Exhibits "B" through "K" hereto]

12. (a) On July 14, 1993, the Commonwealth of Kentucky State Legislature enacted its new "Domestic Violence and Abuse" laws (K.R.S. 403.710, et seq.) which significantly enhanced all corresponding laws which had been in effect since July 13, 1984; and (b), shortly thereafter, Lexington-Fayette [Kentucky] Urban County Government/Mayor, Pamela Miller (hereinafter "Miller"), then Deputy Sheriff, Katherine Witt (hereinafter "Witt"), and...

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various individuals known only as a group of individual persons and/or public officials within the Lexington-Fayette

[Kentucky] Urban County Government (hereinafter "LFG Does 1 through 50") conspired to secure their individual and collective political positions and goals by devising, implementing, and enforcing policies for the express purpose of empowering their primary political base (i.e., the women of Fayette County, Kentucky) to unconstitutionally and/or unlawfully seize and withhold the property of their "significant others", with intent to deprive them thereof and, in effect, directing that: "[i]n all cases of alleged 'domestic violence', whether legitimate or otherwise, **the 'man' goes to jail.**"[41]

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[41] See United States Constitution [supra, page 5 hereof, et seq.], i.e., **FOURTH AMENDMENT**: "The right of the people to be secure in their **persons, houses, papers, and effects**, against unreasonable searches and **seizures**, shall not be violated, and **no Warrants shall issue, but upon probable cause**" (emphasis added); **FIFTH AMENDMENT**: "No person shall **be held** to answer for... infamous crime, **unless on a presentment or indictment** of a Grand Jury, ...**nor be deprived of**...**liberty, or property, without due process of law**" (emphasis added); **FOURTEENTH AMENDMENT**: "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emphasis added); and United States Codes Annnotated [supra, page 11 hereof, et seq.], i.e., **TITLE 18 U.S.C. § 2. Principals**: "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commission, **is punishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 3. Accessory after the fact:** "Whoever, knowing that an offense against the United States has been committed, **receives, relieves**, comforts **or assists** the offender in order to hinder or prevent his apprehension, trial or punishment, **is an accessory**..." (continued, page 48 hereof)

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13. On August 25, 1994, Akers received a sizeable cash settlement pursuant to a previous business venture involving his then operating corporation, Coleman/Akers & Akers, Incorporated, but was at the time, **and yet remains**, prohibited

from disclosing the terms and conditions thereof pursuant to a "Non-disclosure Agreement" executed concurrently with the "settlement agreement" and forming an integral part thereof.

14. During Thanksgiving weekend of 1993, Bishop expressed to several members of Akers' family that she was (a) "unhappy" in her marriage to Akers and "just waiting for the right chance to get out of it"; (b) that she had not "seen any of [that money in hereinabove paragraph E-13] yet"; (c) that she had "been offered a job in Cincinnati and [would] probably take it"; and (d) that some of her "friends at Central Bank and [certain...

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[41] United States Codes Annnotated (continued from page 47 hereof): "... **after the fact**." (emphasis added); **TITLE 18 U.S.C. § 5. United States defined**: "The term 'United States', as used in this title in a territorial sense, includes **all places** and waters, continental or insular, **subject to the jurisdiction of the United States**, except the Canal Zone." (emphasis added); **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally**: "(a) Whoever **corruptly...endeavors to influence or impede any grand or petit juror**, or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emphasis added); **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant**: "(b) Whoever knowingly uses **intimidation ...or corruptly persuades** another person, **or attempts to do so**, or engages in misleading conduct toward another person, **with intent** to -- (1) **influence**, delay, **or prevent**...**testimony of any person** in an official proceeding; (2) **cause or induce any person to** -- (A) withhold testimony, or withhold a record, document, or other object from an official proceeding; (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's integrity** or availability in an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both." (emphasis added); (continued, page 49 hereof)

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members of her] family" had been advising her to "leave [Akers] and then divorce him and take everything [Akers] has."[42]

15. During the week before Christmas, 1993, (a) Bishop had an allergic reaction to Amoxycillin; (b) was taken to an Emergency Room of a Lexington area hospital on two occasions by Akers; (c) fainted in the couple's bathroom due to **extreme**

constipation; (d) was revived by Akers; and (e) reacted by stating to Akers: "Thank you for saving my life!".

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[41] United States Codes Annnotated (continued from page 48 hereof): **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: "**Every person** who, **under color of any statute, ordinance, custom**, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress;" (emphasis added)'; and **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen equal proection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, **or class of persons**, to the equal protection of the laws; (3) ...**in any case of conpiracy** set forth in this section, if **one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators;" (emphasis added)

[42] Akers was not aware of **any of these facts** until June of 1997, when informed thereof by members of Akers' family and **while Akers was imprisoned at Eastern Kentucky Correctional Complex**, in West Liberty, Kentucky (within the Kentucky Department of Corrections) pursuant to his **first convictions** as outlined in hereinafter paragraphs E-31 through E-38, E-40 through E-42, E-48, E-56, E-58, E-60 through E-68, & E-70 through E-86.

CONSPIRACIES ARE BORN

16. In early January of 1994, Bishop informed Akers that her friend, Doris Fleming (hereinafter "Fleming"), as well as numerous other co-workers at Central Bank & Trust Company, Incorporated (hereinafter "CBT"), had been advising her to

"divorce [Akers] and take everything he has".

17. During the succeeding three months, of January to April of 1994, Bishop became virtually impossible to placate any manner and the Akers' homelife became all but unbearable.

18. In early March of 1994, Bishop assaulted the Akers' granddaughter, Shannan, for only refusing to drink the beverage Bishop had given her to drink with her meal. Although Akers was extremely distraught by Bishop's behavior, his only reaction was to tell Bishop that he "strongly disapprove[d] of what [she had] just done".

19. It being obvious to Akers that his family needed "new direction", Akers was baptized in, and transferred his church membership to Southland Christian Church of Lexington, Inc. (hereinafter "SCC") on March 27, 1994. It was at that event that Akers first had any substantive contact with Todd Layne (hereinafter "Layne"), a Pastoral Counselor at SCC.

20. On the following Sunday of April 3, 1994, Bishop transferred her church membership to SCC, as well.

21. During the succeeding month or so, upon insistence of Bishop, the Akers' sought the counsel of Robert Pitman, a...

Pastoral Counselor in the Lexington, Kentucky, area, in effort to resolve and/or reconcile all of their marital difficulties. When Pitman encouraged Bishop to recognize and correct her "own faults", however, Bishop terminated Pitman's counsel and sought the counsel of Layne.

22. Akers has never wanted, sought, nor consented to accept the counsel of Layne who, at the time, was only twenty-four years of age; had been married less than two years; and had only one child yet in early infancy.

23. On April 7, 1994, Bishop returned to the Akers' home, from shopping, and attempted to provoke Akers into an argument over something to do with "H & R Block" and "income taxes". When Akers refused to engage in an argument with Bishop, she angrily left home with the Akers' son, Alan, and refused to return for the succeeding ten days.

24. At various times beginning on, or about, April 8, 1994, the herein Defendants Fleming, Layne, and yet unidentified co-conspirators at CBT (hereinafter "CBT Does 1 through 40") and SCC (hereinafter "SCC Does 1 through 50") continued to encourage Bishop to "divorce [Akers] and take everything he has"[43], those said Defendants and co-conspirators being aware of those facts in hereinabove paragraphs E-12 through E-14.

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[43] See, e.g.: **Title 18 U.S.C. § 2** [supra, page 11 hereof], i.e, "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels,** commands, **induces, or procures** its commission, **is punishable as a principal.** (b) Whoever **willfully causes an act to be**..." (continued, page 52 hereof)

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25. Bishop, under the advice of Fleming and Layne, attended a Bible Study Class at SCC on April 13, 1994, during that time Bishop was separated from Akers as set forth in the hereinabove paragraphs E-4, E-14, E-16, & E-26.

26. (a) Bishop, having already removed her wedding band (see hereinabove paragraphs E-4, E-11, & E-21), initiated and/or acquiesced to an introduction to a man yet unknown to Akers, one Donald Shannon (hereinafter "Shannon") who, at the time: was (b) in the process of divorcing his wife of over twenty-five years; was (c) a deacon at SCC; and was (d) a Commercial Loan Officer at Bank One, Lexington, NA, where he had access to the financial records of Akers and hereinabove C/AA.

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[43] **Title 18 U.S.C. § 2** (continued from page 51 hereof): "... **done** which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **Title 42 U.S.C. § 1983** [supra, page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or**

immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." (emphasis added); **K.R.S. 514.030** [supra, page 34 hereof], i.e., "(1) Except as otherwise provided in KRS 217.181 or 218A.1418, **a person is guilty of theft by unlawful taking or disposition when he unlawfully: (a) Takes or exercises control over moveable property of another with intent to deprive him thereof**; (2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the **value of the property is three hundred dollars or more**, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D Felony**." (emph. added); **K.R.S. 514.080 Theft by extortion**: "(1) A person is guilty of theft by extortion when he intentionally obtains the property of another **by threatening to**: (b) **Accuse anyone of a criminal offense**; or (c) **To expose a secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute**...; (3) Theft by extortion is a Class A misdemeanor unless the value of the **property obtained is three hundred dollars or more**, in which case it is a **Class D felony**." (emphasis added).

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27. The following day, April 14, 1994, Shannon contacted Bishop at her office at CBT and a "rendezvous" was arranged for later that same day.

28. **Yet being <u>totally unaware</u> of those facts in herein above paragraphs E-9, E-11, E-12, E-14, E-24, and E-25 through E-27**; (a) Akers waited at the residence of the Akers' son, Wayne, until around 10:30 p.m. on April 14, 1994 in an effort to encourage Bishop to return to their home. (b) It being Akers' objective to restore harmony to his marriage and family, he then inquired of Bishop as to "the three worst things [Akers had ever done to Bishop] and, if [they could] deal with those, then surely [they could] deal with all the others". (c) Bishop's only response to Akers' inquiry was in reference to an occasion in August, 1967, when Akers allegedly "undressed [Bishop] and made [her] stand before [Akers] at [Akers'] parents' house". (d) Being **<u>flabbergasted</u>** by Bishop's response, and upon her adamant refusal to return home, Akers purchased a rose for Bishop, presented it to her, and told her: "I just want you to get better"; and (e) Akers promptly returned to the couple's marital home in total despair.

29. (a) Over the succeeding four days of April 15 through April 18, 1994, Bishop refused to return to the Akers' marital home until she was "reasonably sure" that Akers was unaware of those facts as outlined in hereinabove paragraphs E-24 through E-27, and without concurrence thereof by Layne and Robert Pitman. (b) On the evening of April 18, 1994, Akers and Bishop...

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met with Pitman; (c) Bishop received the assurances she was seeking; (d) returned home with Akers and was; (e) treated "like a queen" over the succeeding three weeks by Akers.

30. On May 1, 1994, Bishop again assaulted one of Akers' grandchildren (hereinabove "Shane"), while shopping with him for his **second birthday**. Akers, being already extremely troubled by that event in hereinabove paragraph E-18, advised Bishop that no further such mistreatment of the Akers' grandchildren would, **or could**, be tolerated.

31. On May 4, 1994, Akers and Bishop attended a Bible Study Class at SCC during which; (a) Akers noticed Bishop and a man unknown to Akers (later learned to be Shannon) behaving in an "interesting" manner toward each other. (b) At the end of the class, Akers noticed this same man "glaring" at Bishop's "mid-section" in a manner which; (c) was, at the very least, "inappropriate" in a church atmosphere. (d) En route back to the Akers' marital home, Akers inquired of Bishop as to the identity of the unknown man and how she knew him. (e) Bishop responded to Akers' inquiries to the effect that: "I don't know, I've never seen him before". (f) Then puzzled by Bishop's responses, Akers questioned Bishop further upon their arrival at home. (g) After admitting that she had initially lied to Akers because of the way he "would react", Bishop disclosed that she had "met [Shannon] at Bible Study a few weeks ago shared [her] bible with him". (h) Akers, being upset that Bishop had lied to him as she had done so many times before, and being concerned

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about the affect Bishop's behavior at the Bible Study Classes might have on the Akers' standing in the church, called a "time out" and took the Akers' dog for a walk. (i) Upon returning a few minutes later, Akers noticed that Bishop had already gone to the couple's bedroom to prepare for bed. (j) Akers then sat down at the couple's kitchen table just to "think things over". (k) At about 10:30 p.m., Bishop "stormed" into the kitchen and screamed: "I'm going to ask you just on time to come on to bed with me!" (l) Akers reacted: "No, I want to sit here and think for a while. I'll be up a little later". (m) Bishop then went to bed. (n) At approximately 11:30 p.m., Akers went to the couple's bedroom to prepare for bed, as well. (o) Upon entering the couple's bedroom, Akers noticed Bishop lying, as closely as possible, to "her side" of the bed. (p) Akers then thought to himself: "Well, I've certainly seen this before. I'll 'sleep on it' and approach her again in the morning." (q) Akers then quietly prepared for bed, laid down, and went to sleep. (r) At approximately 2:15 a.m. on May 5, 1994, Akers awakened; (s) gently nudged Bishop, and; (t) said to Bishop: "Carolyn, I'd really like to know the truth." (u) Bishop then turned toward Akers and screamed: "**Gorden, I already told you the truth! You are <u>not going to cross-examine</u> me! ...etc., etc.!**". (v) Akers then got out of bed, went to the couple's bathroom to wash his face with cold water, and then returned to the couple's bed; (w) intending only to remove Bishop from the bedroom until she "cooled down". (x) Before Akers reached the bed, however, ...

Bishop sprang to her feet and began to "flog" Akers' face and chest with her fists. (y) Using only his torso and open arms (to guide only), Akers forced Bishop out of the bedroom, and (z) just outside the bedroom door, Bishop "plopped down" in the hallway floor, brushing Akers at his knees with her buttocks; (aa) causing Akers to lose his balance and; (bb) Akers' left hip made an indention (**7-inch diameter by 1/2-inch deep, <u>max.</u>**) in the hallway drywall partition. (cc) Akers then kicked Bishop on her left buttocks with the inside (arch) portion of his bare left

foot; (dd) Bishop then struck Akers in his groin with her right fist. (ee) **As purely a <u>reaction</u>, and instantly reflecting upon those events in hereinabove paragraphs E-18 & E-30**, Akers then slapped Bishop on her left lip, **<u>in a restrained mannner</u>**, with his open right hand. (ff) Akers then stepped back into the couple's bedroom, slammed the door, and locked it. (gg) The Akers' son, Alan, emerged from his bedroom and asked: "What's going on out here?" (hh) Akers then stepped out of his bedroom and said: "I'm going for a drive. I'll be back in about an hour." (ii) Akers then went for a drive but returned about twenty minutes later, and; (jj) Upon entering the Akers' front door, Akers noticed Bishop standing at the Cloak Closet, ready to leave home. (kk) Akers asked Bishop: "Can't we, at least, sit down and talk about this?"; (ll) Bishop retorted: "**I don't think so!**" (mm) Akers then went to the kitchen table to try and figure out: "What on earth happened here?". (nn) Bishop then entered the kitchen (apparently to get something) and Akers said...

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to her: "You know, my Dad told me a long time ago you weren't shooting straight with me. Now I think I know what he meant." (oo) Bishop responded angrily: "**Well, at least I didn't do what you did in Dallas!**" (referring to a pseudo-adulterous event, in November of 1981, which Akers had informed Bishop of on May 31, 1991). (pp) The hereinabove is the **<u>total extent</u>** of the alleged "assault" of Bishop on May 4 (and/or 5), 1994. (qq) Bishop and the Akers' son, Alan, then left the Akers' home, Bishop slammed the door behind her, and drove to Akers' mother's home (approximately four miles away) where they spent the balance of the night. (rr) Bishop slept in the same bed with Akers' elderly mother, Woodsie Akers (hereinafter "Woodsie) for the balance of the night and; (ss) resumed normal work activities at CBT less than six hours after the hereinabove altercation. (tt) **Other than a <u>slightly-swollen</u> lip, Alan and Woodsie saw <u>no signs of injury to Bishop</u>**; (uu) **Bishop <u>did not complain</u> of, <u>or otherwise mention</u>, any injuries**; and (vv) behaved essentially "normally" other than being "emotionally" upset. [see TT#2, A.

P. Akers, 05/21/96, 11:32:30 et seq.; TT#2, W. E. Akers, 05/21/96, 14:27:40; and TT#3, A. P. Akers, W. E. Akers, 10/28/98, 09:23:00, et seq., & TT #3, 10/27/98, 17:49:45, et seq.]

32. In response to Akers' attempts at a reconciliation over the succeeding five days, Bishop sought, and obtained, an "Emergency Protection Order" against Akers on May 10, 1994 [see Exhibit "L" hereto]. As the basis therefor, Bishop tendered her Affidavit which stated as follows: **"[t]oday, May 10, 1994, he**

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is intoxicated and calling me at work continuously. I am afraid I will lose my job if he doesn't stop. On May 4, he hit me and kicked me and I left home". [Exhibit "M" hereto (emph. added)]

33. In early evening, on May 11, 1994, Akers was "served" with the hereinabove "Order and Summons" and, on May 12, 1994, Akers was arrested for purportedly violating that order by contacting Bishop **by telephone** after being served.

34. On May 13, 1994, Akers was arraigned before Fayette District Judge Thomas Clark (hereinafter "Clark") on the charges of "Domestic Violence" and "Contempt of Court" [see Transcript, Exhibit "N" hereto]. Hereunto relevant portions of the audio transcript of that arraignment include, but are not limited to, the following:

Judge Clark: Mrs. Akers, ...Would you raise your right hand, please? Do you swear that the testimony you're about to give to be the truth, the whole truth, and nothing but the truth? [Page 1, lines 6 through 14]

[Bishop]: I do. [page 1, line 16]

Judge Clark: What I propose to do at this point is since the domestic violence hearing is going to go ahead and be heard on May the 24th, is

go ahead and continue this contempt until May the 24th as well. [page 7, lines 15 thru 23]

Mr. Akers: I can assure The Court, I will not contact her again. I mean -- it's very clear to me now, I can assure you, it was not clear to me before but it's very, very clear to me now. [page 8, lines 14 through 17][44]

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[44] "[In indirect civil contempt proceedings, the] **contemnor** holds the keys to the jail in his pocket and **is entitled to immediate release upon his willingness to abide by the court's orders**." (continued, page 59 hereof)

Judge Clark: I'll advance the domestic violence,[45] ... continue the contempt[46] to May the 19that 9:30 in this court room. [page 10, lines 1 through 7]

Judge Clark: Mr. Akers, I considered your counsel's comments in regards to your release from custody. ...I'm going to leave your bond as presently set and you'll remain in custody unless bond is posted. [page 10, lines 14 through 23; page 11, line 1]

Todd Layne: I am one of the ministers at Southland Christian Church and we have worked with both these people. One of the things we've tried to get them to do is make some tough decisions about their relationship, and especially Gordon [Akers] about the treatment center, and Gordon has been unwilling to do that up

to now, so if you could put some - something behind it to make sure he goes because he has chose a treatment center before but has not chosen to stay. ...**that would be our recommendation that you put something behind it to make sure he's there**.[47] [page 12, lines 12 thru 23; page 13, lines 1 thru 21] (emphasis added)

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[44] (continued from page 58 hereof): See also: **K.R.S. 403.760** [supra, page 28 hereof], i.e., "(1) **Violation of the terms or conditions of an order, under the provisions of KRS 403.740 or...**" **403.750**, whether an emergency protective order, or an order following hearing, after service of the order on the respondent, or notice to the respondent, **shall constitute contempt of court**; (5) **Civil proceedings and criminal proceedings are mutually-exclusive. Once either has been initiated, the other may not be undertaken regardless of the outcome of the original proceeding**." (emphasis added); **K.R.S. 403.780** [supra, page 28 hereof], i.e., "**Testimony offered by an adverse party** in a hearing held pursuant to the provisions of 403.745 **shall not be admissible in any criminal proceeding involving the same parties**." (emphasis added); and hereinafter paragraphs E-86.V(b) & E-110.V(a)

[45] See also: Hereinafter paragraph E-38 and corresponding footnote [51].

[46] See also: Hereinafter paragraph E-38 and corresponding footnote [52].

[47] Layne was **not under oath**. See: United States Constitution, e.g., **ARTICLE IV-SECTION 2** [supra, page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **FOURTH AMENDMENT** [id., page 7 hereof], i.e., "The right of the people to be secure..." (continued, page 60 hereof)

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[47] **FOURTH AMENDMENT** (continued from page 59 hereof): "...in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated." (emphasis added); **FIFTH AMENDMENT** [id., pages 7 & 8 hereof], i.e., "No person shall **be held** to answer for...infamous crime, **unless on a presentment or indictment** of a Grand Jury, ...**nor be deprived of** ...**liberty**, or property, **without due process of law.**" (emphasis

added); **FOURTEENTH AMENDMENT** [id., pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or **enforce** any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emph. added). **See Also**: **TITLE 18 U.S.C. § 2** [id. page 11 hereof], i.e., "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commission, **is punishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 5** [id., pages 11 & 12 hereof], i.e., "**United States defined:** The term "United States", as used in this title in a territorial sense, includes **all places** and waters, continental or insular, **subject to the jurisdiction of the United States**, except the Canal Zone." (emphasis added); **TITLE 18 U.S.C. § 1201. Kidnapping** [id., page 12 hereof], i.e., "(a) Whoever, unlawfully **seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds** for ransom or reward **or otherwise** any person, except in the case of a minor by the parent thereof, when -- (1) the person is **willfully transported in interstate commerce**; (2) any such act against the person is done within the special maritime jurisdiction of the United States; (b) With respect to subsection (a)(1) above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce. (c) **If two or more persons conspire to violate this section** and one or more of such persons do any covert act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life." (emph. added); **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally** [id., page 13 hereof], i.e., "(a) Whoever **corruptly...endeavors to influence or impede**...officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emphasis added); **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant** [id., page 14 hereof], i.e., "(b) Whoever...**corruptly persuades** another person, **or attempts to do so, or engages in misleading conduct toward another** person, **with intent** to -- (1) **influence**, delay, **or prevent the testimony of any person** in an official proceeding; (2) **cause or induce any person to** -- (A) withhold testimony...from an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both." (emph. added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or District of Columbia, **subjects, or causes to**..." (continued, page 61 hereof)

[47] **TITLE 42 U.S.C. § 1983** (continued from page 60 hereof): "... **be subjected**, **any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emph. added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id., pages 16 & 17 hereof], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added); **Constitution of Kentucky**: **Ky Const § 1. Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ...redress of grievances, bearing arms**: [supra, page 26 hereof], i.e., "**All men** are, by nature, free and equal, and **have certain inherent and inalienable rights**, among which may be reckoned: **First**: The right of enjoying and **defending their** lives and **liberties**; **Second**: The right of worshipping Almighty God **according to the dictates of their consciences**; **Third**: The right of seeking and pursuing their safety and happiness; **Fourth**: The right of **freely communicating their thoughts and opinions**; **Fifth**: The right of acquiring and **protecting property**; ..." (emphasis added); **Ky Const § 2. Absolute and arbitrary power denied**: [id., page 26 hereof], i.e., "**Absolute and arbitrary power over** the lives, liberty and property of **freemen exists nowehere in a republic, not even in the largest majority**." (emphasis added); **Ky Const § 3. Men are equal...** [id., page 26 hereof], i.e., "All men, ...are equal; and **no grant of exclusive...privileges shall be made to any man or set of men**..." (emphasis added); **Ky Const § 5. Right to religious freedom**: [id., page 26 hereof], i.e., "**No preference shall ever be given by law to any religious sect, society or denomination**; ...**and the civil rights, privileges or capacities of no person shall be** taken away, **or in anywise diminished or enlarged**, on account of his belief or disbelief of any religious tenet, dogma or teaching. **No human authority shall**, in any case whatever, **control or interfere with the rights of conscience**." (emphasis added); **Ky Const § 10. Security from search and seizure; conditions of issuance of warrant** [id., page 26 hereof], i.e., "The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizures; and **no warrant shall issue to search any place, or seize any person or thing**, without describing them as nearly as may be, **nor without probable cause** supported by oath or affirmation."

(emphasis added); **Ky Const § 12**: [id., page 26 hereof], i.e., "No person, **for an indictable offense**, shall be proceeded against criminally by information..., or by leave of court for oppression or misdemeanor in office." (emphasis added); (continued, page 62 hereof)

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[47] (continued from page 61 hereof): **Ky Const § 17. Excessive bail or fine, or cruel punishment, prohibited** [id., page 27 hereof], i.e., "**Excessive bail shall not be required, nor...cruel punishment inflicted**." (emphasis added); **509.040 Kidnapping** [id., page 36 hereof], i.e., "(1) A person is guilty of kidnapping when he **unlawfully restrains another person** and when his intent is: (b) **To accomplish or to advance the commission of a felony**; (2) Kidnapping is a Class B felony when the victim is released in a safe place prior to trial, except as provided in this section." (emphasis added); **514.030 Theft by unlawful taking or disposition** [id., page 37 hereof], i.e., "(1) Except as otherwise provided in KRS 217.181 or 218A.1418, **a person is guilty of theft by unlawful taking or disposition when he unlawfully: (a) Takes or exercises control over moveable property of another with intent to deprive him thereof**; (2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the **value of the property is three hundred dollars or more**, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D Felony**." (emphasis added); **514.080 Theft by extortion** [id., page 37 hereof], i.e., "(1) A person is guilty of theft by extortion when he intentionally obtains the property of another **by threatening to**: (b) **Accuse anyone of a criminal offense**; or (c) **To expose a secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute**; ...(3) theft by extortion is a Class A misdemeanor unless the value of the **property obtained is three hundred dollars or more**, in which case it is a **Class D felony**." (emphasis added); **514.110 Receiving stolen property** [id., page 37 hereof], i.e., "(1) A person is guilty of receiving stolen property when he **receives, retains, or disposes of moveable property of another** knowing that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner. (2) The possession by any person of any recently stolen property shall be ***prima facie*** evidence that such person knew that such property was stolen. (3) Receiving stolen property is a Class A misdemeanor unless the **value of the property is three hundred dollars or more**, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D felony**." (emphasis added); **Kentucky Rules of Evidence**: **K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES** [supra, page 40 hereof], i.e., "**(a) Character Evidence Generally**: Evidence of a persons character is **not admissible** for the purpose of proving action in conformity therewith on a particular occasion, **except**: (1) *Character of accused*: Evidence of a pertinent trait of character or of the general moral character **offered by the accused**...; (2) *Character of Victim Generally*: Evidence of a pertinent trait of character of the victim of the crime **offered by the accused**...; **(b) Other Crimes, Wrongs, or**

Acts. Evidence of other crimes, wrongs, or acts **is not admissible** to prove the character of a person in order to show action in conformity therewith. ...**(c) Notice Requirement**. In a criminal case, if the prosecution intends to introduce evidence pursuant to subdivision (b) of this rule as a part of its case in chief, it **shall give reasonable pretrial notice to the defendant** of its **intention** to offer such evidence. **Upon failure of the prosecution to give such notice the court may** exclude the evidence offered under subdivision (b) or for cause shown may excuse the failure to give such notice and **grant the defendant a continuance or such other remedy as necessary to avoid unfair prejudice caused by such failure**." (emphasis added); **K.R.E. 602. LACK OF PERSONAL KNOWLEGE** [id., page 41 hereof], i.e, "A witness may not testify to a matter..." (continued, page 63 hereof)

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35. On May 16, 1994, Bishop visited Dr. Adrian Fulmer, her family practitioner in Lexington. Dr. Fulmer's records, and later testimony at trial, revealed that he **saw no signs of injury about her head, neck, or upper body**, and **[Bishop's] "range of motion [in all extremities] appeared to be normal"**. [see TT #1, 05/20/96, 15:31:10, & 15:40:50, et seq.; and TT #2, 10/27/98, 10:54:50 et seq. (emphasis added)]

36. On May 18, 1994, Bishop visited Dr. Mark Einbecker, an Orthopedic Surgeon in Lexington. Dr. Einbecker's records, and his later testimony, revealed that he saw no signs of injuries about Bishop's head, neck, or upper body; "[Bishop's] range of motion in all extremites appeared to be normal"; and that he "couldn't tell if Bishop's symptoms were physical or emotional". Dr. Einbecker also noted and testified that Bishop suffered from "Degenerative Disk Disease", a pre-existing and long-standing "arthritic condition". [TT #2, 10/27/98, 16:27:16, et seq.] Dr. Einbecker also stated: "**Based on the X-rays taken, there's**...

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[47] **K.R.E. 602. LACK OF PERSONAL KNOWLEGE** (continued from page 62 hereof): "...unless evidence is introduced to support a finding that the witness has **personal knowlege** of the matter." (emphasis added); **K.R.E. 1101. APPLICABILITY OF RULES** [id., page 41 hereof], i.e., "**(a) Courts**. These rules apply to **all the courts of this Commonwealth in the actions, cases, and proceedings** and to the extent hereinafter set forth. ...**(c) Rules on Privileges**. The rules with respect to **privileges apply at all stages of all actions, cases, and**

proceedings." (emphasis added); hereinbefore paragraphs E-12 through E-14, E-16, E-21, E-22, E-24 through E-26, E-31, & E-32; hereinafter paragraphs E-38 thru E-41, E-43, E-44, E-46, E-50(f), E-56(a), E-56(b), E-56(e), E-61, E-62, E-65, E-66, E-70, E-72, E-73 thru E-79, E-81, E-82, et seq.; and TT#2, T. Layne, 10/27/98, 11:18:00, et seq. **Akers was further remanded to custody** pending the May 19, 1994, hearing/trial **and remained in custody until transported directly** to Lexington's [Kentucky] Bluegrass Airport en route to the Hazelden Foundation, in Minnesota. (see hereinafter paragraphs E-38, et seq.)

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no doubt in my mind that she had a pre-existing condition prior to this altercation" [TT#1, M. Einbecker, 05/20/96, 14:27:55]; and that "**Herniations do occur naturally**..." [id., 14:32:40]

37. As well, on May 18, 1994, Akers was arraigned before the same Fayette District Court Judge David Hayse who had issued the initial "Domestic Violence Order and Summons" in hereinabove paragraph E-32. The following transcript is a **verbatim account** of that arraignment/hearing:

Judge Hayse:	Number one. Gorden Akers. I guess that's one and two. Gorden -- James Gorden Akers?
Bailiff:	He's in custody, your honor.
Prosecutor:	Your Honor, I'd like to cut right to
Bailiff:	Mr. Akers.
	-- (inaudible)--
Judge Hayse:	Ms. Rabits your attorney?
Akers:	Beg pardon?
Judge Hayse:	Ms. Rabits your attorney?
Akers:	Yes.

Judge Hayse: Did she understand that you were going to be here today?

Akers: Uh, no Sir. I didn't know myself I was supposed to be here today. Uh, what's the--

Judge Hayse: Well, you're charged with terroristic threatening and assault in the 4th degree.

Akers: Uhhhhh --

Judge Hayse: Were you arraigned on these--last Thursday, maybe? Remember being in 1:00 or 12:30 court?

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Akers: Yes, Sir. Yes, Sir. But I thought this was was supposed to be heard again tomorrow.

Judge Hayse: You probably have some Domestic Violence matters that are being heard, as well. And those, while they may be out of the similar or same spousal situation, they are different charges.

Akers: Sir, I didn't terrorize anyone that I'm aware of.

Judge Hayse: Well, I -- I don't want to talk about the specifics for you -- at this stage. -- Go ahead, I'm sorry.

Prosecutor: If he wanted to plead today -- uh -- we would be willing to merge the terroristic threatening into the assault. One hundred and costs.

Judge Hayse: Well, are you on probation for anything at this stage?

Akers: No Sir. No Sir. -- (pause) -- **This all basically stemmed from one incident -- or one incident for two or three days.**

Judge Hayse: I really sorta think he needs to have his attorney here. This doesn't even show assault fourth. It shows emergency detention and temp -

Prosecutor: I've got it right here --

Judge Hayse: Oh, there is a separate one?

-- (pause) -

-- (inaudible) --

Judge Hayse: Did they escort you to Eastern State, sir?

Akers: Yes Sir.

Judge Hayse: And they turned around and released you back?

Akers: They brought me back over here, yes. I was pretty heavily intoxicated, Sir.

Judge Hayse: Well, I'm gonna do one of two things. I'll continue to give you a chance to contact your attorney. The County has indicated that the would recommend $100 and costs on one count of assault fourth. Is that correct?

Prosecutor: Yes, Your Honor.

Judge Hayse: Now, I'm not -- You have a right to talk to your attorney and you may prefer to do that.

Akers: Uh, I don't have a problem with that. That sounds -- that sounds fair to me.

Judge Hayse: You understand you'd be giving up your right to talk to an attorney if you plead guilty?

Akers: Yeah, that's fine. I, that's, that's very--

Judge Hayse: Do you understand you'd be giving up your right to a jury trial?

Akers: That's correct. The $100 -- uh -- and costs for that particular incident would be more than reasonable as far as I'm concerned.

Judge Hayse: Well, I agree with you, sir. I just

want to make sure you understand what you're doing.

Akers: I, I, I understand. I've had quite a bit of experience in court. Now -- not in criminal courts before, okay?

Judge Hayse: **Alright, so how do you plead to fourth degree assault?**

Akers: **I plead guilty to that, Sir.**

Judge Hayse: **Merge the terroristic threatening; $100 and costs on the assault fourth.** I'll set it for fine payment August 17th. It must be paid, in full, before August 17th. Now, are you being held on the domestic violence matter?

Akers: No, Sir. I think I'm being held on contempt of court --uh-- is what I'm being held for.

Judge Hayse: Alright. Well, this releases you on these two charges, but it's probably not going to release you --

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Akers: **So this releases everthing except for the contempt of court, is that right?**

--(inaudible)--

Judge Hayes:	**Well it sounds like it, but I'm not sure.**
Akers:	**I think it does.**
Judge Hayse:	And you're going back to court tomorrow on that.
Akers:	Tomorrow -- as I understand it, and that should be wrapped up tomorrow, as well, Sir.
Judge Hayse:	**Well, I hope that you understand the seriousness of what you've been going through and do not have any further contact with the other party.**
Akers:	I, I, certainly understand that now, Sir.
Judge Hayse:	Okay, Good luck.
Akers:	Thank you.

[**Note**: A Certified Transcript of the hereinabove hearing/trial has not yet been prepared. However, Akers was provided a copy of the audio-taped transcript by Fayette District Court and the same is, hereby, incorporated herein by reference as Exhibit "O" hereto]

38. On May 19, 1994, a hearing/trial was conducted before Fayette (Kentucky) District Court Judge Thomas Clark, charging Akers with "**Contempt of Court**" (pursuant to that outlined in hereinabove paragraphs E-32 & E-33), and "Domestic Violence" (pursuant to that which is outlined in the hereinabove paragraph E-31). Akers was sentenced to six months (6) in jail for the "Contempt of Court" charge (to be suspended if Akers

completed an alcohol treatment program at Hazelden, in Minnesota), and a...

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"Domestic Violence Order" was entered imposing sanctions upon Akers to have "no contact with [Bishop]:" ..."**by remaining at all times at least 1,000' away from [her]**"[48] for a period of one year. Hereunto relevant portions of the "Certified Transcript" of that hearing/trial [see Exhibit "P" hereto] include, but are not limited to, the following:

Akers' Attorney: Your Honor, the reason I'd asked for the break was, um, I thought there might have been charges brought that I was not aware of that would create a double jeopardy issue, but the fact -

-- (inaudible) --

citations issued by the police officers whenever they went to his house that night, so that would not create a double jeopardy issue in this case.

Judge Clark: I think I previously --

Akers' Attorney: Swore both witnesses --

Judge Clark: I think I swore both witnesses in.[49]

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[48] See: Vagueness Doctrine [supra, page 31 hereof], i.e, "...**a law, (e.g., criminal statute) which does not fairly inform an ordinary person of what is commanded or prohibited is unconstitutional as violative of due process**."; and "**Void for vagueness doctrine** [id.], i.e.,-"A law which is so obscure in its

promulgation that a reasonable person could not determine from a reading what the law purports to command or prohibit is **violative of due process**." See also: **K.R.S. 505.010 Entrapment** [supra, page 32 hereof], i.e., "**A person is not guilty** of an offense arising out of a proscribed conduct **when**: (a) **He was induced or encouraged** to engage in that conduct by a public servant or **by a person acting in cooperation with a public servant seeking to obtain evidence against him for the purpose of a criminal prosecution**; and (b) At the time of the inducement or encouragement, **he was not otherwise disposed to engage in such conduct**. (emphasis added)

[49] See: **K.R.S. 505.040** [supra, page 33 hereof] and corresponding footnote [34]; and **K.R.S. 505.030 (4)** [supra, page 34 hereof], esp., with respect to: "The former prosecution was improperly terminated **after the first witness was sworn** but before findings were rendered by the trier of fact." (emphasis added)

Akers' Attorney: Yes. [page 1, lines 3 through 13]

Judge Clark: Mrs. Akers, you have filed a domestic violence petition with this court alleging that **on, or about, May the 4th here in Fayette County certain acts of domestic violence or abuse occurred**. Are the allegations in that petition true and correct? [page 2, lines 11 through 18] (emphasis added)

Mrs. [Bishop]: Your Honor, may I say something? [page 12, line 17]

Judge Clark: Yes, ma'am. [page 12, line 19]

Mrs. [Bishop]: **On May the 4th he pulled me out of the bed by the hair of my head and drug me into the hallway, he hit me in the mouth with his fist a couple of times**[50]

and he kicked me, and there's a hole in the hallway wall and <u>I'm not sure how it got there</u>. [page 12, lines 21 thru 23; page 13, lines 1 through 4,] (emphasis added)

<u>Judge Clark</u>: For purposes of the record, as far as the initial domestic violence petition, **I'm going to make a <u>finding of fact</u> that there is evidence to believe that domestic violence or abuse has occurred.**[51] At this point, Mr. Akers, ...

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[50] It is **<u>absolutely scurrilous</u>** for Bishop to allege that Akers, who was 6'2" tall, 238#, and in excellent health at the time, could have committed these acts and left no residual signs thereof other than a "slightly swollen lip" (see hereinabove paragraphs E-31(ee), E-31(ss) thru E-31(vv), E-35, & E-36; and hereinafter paragraphs E-81, E-86, E-87, E-96, E-110, E-111, & E-119.

[51] <u>See</u>: **K.R.S. 403.720(1)**" [supra, page 29 hereof], i.e., "'**Domestic violence**' and abuse **means physical injury, serious physical injury, ...or assault between family members**...; & ...(2) '**Family member**' **means a spouse**..." (emphasis added); **K.R.S. 403.7505(2)(a)** [supra, page 30 hereof], i.e., "'**Domestic Violence**' includes...physical...abuse, and **is considered <u>criminal conduct</u>**" (emphasis added); **K.R.S. 500.080** [supra, page 32 hereof], i.e., "As used in the Kentucky Penal Code, ...(13) "'**Physical injury**' means substantial pain or any impairment of physical condition; ...(15) '**Serious physical injury**' means physical injury which **creates a substantial risk of death**, or which **causes** serious and...prolonged impairment of the function of any bodily organ." (emphasis added)

I'm going to enter a restraining order that at this point restrains you from committing -- from any further contact with Ms. [Bishop], also to remain at least a thousand

feet from her at all times. ...Additionally, a consideration or condition of that order will be as well that when the space becomes available at Hazelden in Minnesota that you will present yourself to that facility and complete what I believe is what? A thirty-day program? [page 14, line 17 thru page page 15, line 21] (emphasis added)

Judge Clark: **Additionally, on the issue of contempt, Mr. Akers, I'm going tofind that you are in contempt**[52] of the Emergency Protective Order that was in fact entered and served and that in fact you were served with. **I'm finding you in contempt**[53], **I'm going to impose a sentence of six months on that matter**. -- the balance of that time will be suspended conditioned upon you completing that [Hazelden] program. [page 22, lines 1 through 24][52] (emphasis added)

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[52] See: **K.R.S. 403.760** [supra, page 30 hereof], i.e., "(1) Violation of the terms or conditions of an order under the provisions of KRS 403.740 or 403. 750, whether an emergency protective order, or an order following hearing, **after service of the order on the respondent**, or notice to the respondent, **shall constitute contempt of court**; (5) **Civil proceedings and criminal proceedings are mutually-exclusive. Once either has been initiated, the other may not be undertaken regardless of the outcome of the original proceeding**. (emphasis added); **Menna v. New York**, 423 U.S. 61, 96 S.Ct. 241, 46 L.Ed (2d) 195 (1975), i.e., "[w]here 30-day sentence was imposed after adjudication for contempt of court, ...contempt adjudication was criminal conviction." [see also: **Menna v. New York**, supra, footnote [4], page 10 hereof]; and TT#3, L. Red Corn, 05/21/96, 09:53:25.

[53] **Akers was again remanded to custody and then remained in custody until transported directly from the Fayette (Kentucky) County Detention Center to Lexington's Bluegrass Airport en route to Hazelden Foundation**, in Minnesota, on May 30, 1994 (see footnote [44] above, i.e, "[the] **contemnor** holds the keys to the jail in his pocket and **is entitled to immediate release upon his willingness to abide by the court's orders**.") A "Domestic Violence Order" was then entered which formalized the Court's rulings and **now alleged that Akers was "believed to be armed/dangerous"**. [see Exhibit "Q" hereto]

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39. On May 26, 1994, Bishop received X-rays of her neck at Central Baptist Hospital in Lexington. Dr. Scott Stevens' "Report" [Exhibit "R" hereto] notes as follows:

> "1. There are **abnormalities at multiple levels in the cervical spine**. (emphasis added)
>
> 2. There is a moderate size central and to the right focal disc herniation at C5-C6.
>
> 3. There is a moderate size central and to the right focal disc herniation at C6-C7.
>
> 4. There is a small focal disc bulge or small focal herniation to the right at C3-C4."

[**Note**: It is crucial to note, at this point, that Bishop's subsequent X-rays on 01/24/97 resulted in notations by Dr. Dennis R. Whaley, of the same Central Baptist Radiology Department, as follows:

> "IMPRESSION: There is fusion of the bodies of C5 and C6 with **degenerative change at other levels in the cervical spine**. Only minimal neural foraminal encroachment is evident on the oblique views." [See Exhibit "S"... (emph. added)]

40. Capitalizing on the "Nichole Brown Simpson/Ronald Goldman Tragedy" of June 12, 1994, and Kentucky's newly-enacted "Domestic Violence" laws in the furtherance of those schemes as outlined in hereinabove paragraphs E-12 through E-14, E-16, E-24, E-25 through E-29, & E-31 through E-38, Bishop filed a "Petition for Dissolutionment of Marriage" in June of 1994, **while Akers was at the Hazelden facility**.

41. Having continued to feign injuries as the purported result of those events in hereinabove paragraph E-31, on June 16, 1994, Bishop visited Dr. John J. Vaughan (an Orthopedic..,

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Surgeon in Lexington, Kentucky, and hereinafter Vaughn") with the intent to obtain/extract a diagnosis to serve her objectives outlined in hereinabove paragraphs E-12 through E-14, E-16, E-24, E-25 through E-29, & E-31 through E-40. Bishop further concealed from Vaughn the fact that she previously experienced similar, if not identical, symptoms for in excess of five years prior thereto. [TT#1, J. Vaughn, 05/20/96, 13:32:42; Exhibits "B" through "K" hereto; and "**'Fraud' defined**" (footnote [7], page 13 hereof)]

42. Notwithstanding the obvious causative factors which Vaughn **should have identified** as the source of Bishop's alleged symptoms, i.e., as the result of an **inherited, pre-existing, and long-standing "arthritic condition"** (as detected by Drs. Fulmer and Einbecker), Dr. Vaughn, who being less than two years into establishment of his medical practice, capitalized on Bishop's scheme and the then "hot political issue" of "Domestic Violence" by seizing the opportunity to perform a major surgery, **knowing that the insurance benefits would be unchallenged** in absence of disclosure of a "pre-existing condition" as the "causation" of Bishop's condition and hereinafter-noted **elective surgery**.[54]

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[54] Vaughn subsequently **admitted, under oath, under cross-examination**, that Bishop's medical records and his examination during surgery, revealed that Bishop was suffering from **both "degenerative disc disease" and "arthritis"**

"before her 'injury'" **and that neither could have been caused by Akers** on, or about, May 5, 1994. Vaughn further admitted that those same "pre-existing conditions" of Bishop could have, **in themselves, been the causation of her herniated discs**. [see TT#1, J. Vaughn, 05/20/96, 14:14:40, et seq.; TT#1, J. Vaughn, 10/26/98, 16:27:40, 16:37:49, 16:47:30, 16:49:00, 16:50:25, 16:51:15, 16:51:40, & 16:53:00; and hereinafter paragraphs E-48, E-49, E-56(e), E-86, E-87, E-96, E-110, E-111, and E-121 thru E-127.

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43. On June 29, 1994, Akers was discharged from Hazelden, having completed the program ordered by Judge Clark as outlined in hereinabove paragraph E-38 [see "Discharge Summary", Exhibit "T" hereto] and, upon returning to the Akers' marital residence on that same date, Akers discovered that: (a) Bishop, Fleming, Layne, and an unknown number of CBT Does 1 through 30 and/or SCC Does 1 through 40 had already moved Bishop out of that home and removed all property Bishop wanted[55]; (b) including **hundreds of photographs, greeting cards, and mementos, etc.,**[56] which would have proven that Bishop's later allegations of long-term and/or ongoing "domestic violence and abuse" were fraudulent; **and (c)**...

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[55] See: TT#2, C. Bishop, 10/27/98, 09:49:45; TT#2, D. Fleming, 10/27/98, 13:28:50; and TT#2, J. Preston, 10/27/98, 14:25:25. See also: **ARTICLE IV-SECTION 2, U.S. Const.** [supra, page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **U.S. Const. Amend. 4** [supra, page 7 hereof], i.e., "The right of the people to be secure in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**..." (emphasis added); **U.S. Const. Amend. 14** [supra, page 10 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its**..." (continued, page 74 hereof)

[56] See TT#2, C. Bishop, 10/27/98, 09:49:45; **TITLE 18 U.S.C. § 1512** [supra, page 14 hereof], i.e., "(b) **Whoever** knowingly...or **corruptly persuades another person, or attempts to do so**, or engages in misleading conduct toward another

person, **with intent to**-- (2) **cause or induce any person to**-- (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's** integrity or **availability in an official proceeding**; shall be fined under this title or imprisoned not more than ten years, or both." (emphasis added); and **K.R.S. 524.100. Tampering with physical evidence** [supra, page 38 hereof], i.e., "(1) **A person is guilty of tampering with physical evidence when, believing that an official proceeding is pending or may be instituted, he**: (a) Destroys, mutilates, conceals, **removes**, or alters **physical evidence** which he believes is about to be produced or used in the official proceeding **with intent to impair its** verity or **availability in the official proceeding**; (2) Tampering with physical evidence is a Class D felony." (emphasis added)

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[55] **U.S. Const. Amend. 14** (continued from page 73 hereof): "... **jurisdiction equal protection of the laws**" (emphasis added); **TITLE 18 U.S.C. § 2. Principals** [supra, page 11 hereof], i.e., "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commission, **is punishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 3. Accessory after the fact** [id.], i.e., "Whoever, knowing that an offense against the United States has been committed, **receives, relieves**, comforts **or assists** the offender in order to hinder or prevent his apprehension, trial or punishment, **is an accessory after the fact**." (emphasis added); **TITLE 18 U.S.C. § 4. Misprison of felony** [id.], i.e, "Whoever, **having knowledge** of the actual commission of a felony cognizable by a court of the United States, **conceals and does not as soon as possible make known the same** to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more **than** three years or both." (emphasis added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [supra, page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id. pages 16 & 17 hereof], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the

equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added); **K.R.S. 514.030 Theft by unlawful taking or disposition** [supra, page 37 hereof], i.e., "(1) Except as otherwise provided in KRS 217.181 or 218A.1418, **a person is guilty of theft by unlawful taking or disposition when he unlawfully: (a) Takes or exercises control over moveable property of another with intent to deprive him thereof**; (2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the **value of the property is three hundred dollars or more**, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D Felony**." (emphasis added); and **K.R.S. 514.110 Receiving stolen property** [id.], i.e., "(1) A person is guilty of receiving stolen property when he **receives, retains, or disposes of moveable property of another** knowing that..." (continued, Page 75 hereof)

$19,300.00 cash, which was **clearly identified/marked** as property of "Coleman/Akers & Akers, Inc." (C/AA), was properly secured in a **locked** "Night Depository" bank bag, and had remained **locked** in Akers' briefcase.[56]

44. (a) On July 2, 1994, Bishop (wearing a "soft collar" neck brace) and Layne appeared together on a regional telecast of the previous Sunday's morning worship service at Southland Christian Church (SCC); (b) portrayed Bishop as the victim of an "abusive twenty-five year marriage"; and (c) appealed to the audience and congregation to provide aid and comfort to her.[57]

45. On July 14, 1994, Akers once again "swallowed his pride" and, in effort to salvage his marriage, family, and home, telephoned Bishop at her office at CBT and made the following **single statement**: "This is Gorden, and I still love you."

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[55] **K.R.S. 514.030** (continued from page 74 hereof): "... it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner. (2) The possession by any person of any recently stolen property shall be ***prima facie*** evidence that such person knew that such property was stolen. (3) Receiving stolen property is a Class A misdemeanor unless the **value of the**

property is three hundred dollars or more, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D felony**." (emphasis added)

[56] Note: Only Akers and Bishop knew the combination to Akers' briefcase and the same brief case, **and locked bank bag**, remained **completely intact** upon Akers' return from Hazelden Foundation.]

[57] This service was actually filmed by Donald Shannon (herein Shannon) on 06/26/94. See also: **Title 18 U.S.C. §§ 2, 3, & 4** [supra, page 11 hereof]; **Title 18 U.S.C. § 875** [supra, page 12 hereof]; **Title 18 U.S.C. §§ 1961, et seq.** [supra, pages 14 & 15 hereof]; **Title 42 U.S.C. § 1985(3)** [supra, page 16 hereof]; **K.R.S. 514.080** [supra, page 37 hereof]; hereinabove paragraphs E-8 through E-14, E-16 through E-29, E-31 through E-36, E-38 through E-43; and hereinafter E-47, E-50, E-51, E-56 through E-58, E-81, E-82 through E-87, E-89, E-90, E-95, E-98, E-107, E-109 through E-111, E-119 through E-121, and E-123 through E-125.

Bishop reacted by yelling: "**Well, I don't love you! Just sign the papers and get this over with!**" [see TT#1, L. Red Corn, 05/20/96, 11:01:30]. About three hours later, Akers was again arrested for "Contempt of Court" and sentenced to ten days in jail by the hereinabove Judge David Hayse.

46. Then conceding that any reconciliation with Bishop had become virtually impossible, **Akers made no further attempts to contact her; was extremely careful not to go within miles of her**; began to date other ladies; proceeded to negotiate a "settlement" with Bishop's attorney, Jerry L. Kelly (hereinafter "Kelly"); and make plans to move back to Nashville, Tennessee.[58]

47. At some time prior to the month of August, 1994, and in overt effort to entrap Akers into violating the "1,000'" restriction imposed by the hereinabove "Domestic Violence Order" (see paragraph E-38 hereinabove), Bishop obtained a Post Office Box at the Lansdowne [Lexington, Kentucky 40524] Branch of the United States Post Office being fully-cognizant that Akers had maintained a box at that same location since 1988 on behalf of...

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[58] See: **Article I-Section 9, U. S. Constitution** [supra, page 5 hereof], i.e., "**The migration** or importation **of...persons** as any of the states...shall think proper to admit, **shall not be prohibited**..." (emphasis added); **ARTICLE IV- SECTION 2** [id., page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states"; **U. S. Const. Amend. 14** [supra, page 8 hereof], i.e., "**All persons born** or naturalized **in the United States**, ...are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; nor shall **any state** deprive any person of life, **liberty**, or property, without **due process of law**" (emphasis added); and **Ky Const § 24** [supra, page 15 hereof], i.e., "**Emigration** from the State **shall not be prohibited**"; (emphasis added).

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hereinabove C/AA, and that Akers had diligently picked up mail at that location twice daily since 1988.[59]

48. On August 30, 1994, Bishop underwent surgery, under the advice and orchestration of Dr. Vaughn, and Bishop sustained a permanent twenty to twenty-five percent reduction in mobility of her neck as the proximate result thereof.[60]

49. On, or about the first week of September, 1994, Dr. Vaughn fraudulently invoiced Bishop's insurance underwriter (believed to be Cordage of Lexington) for his services outlined in hereinabove paragraphs E-38, E-39, & E-44 and, at some point thereafter, received compensation for services as invoiced.[61]

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[59] This was **obviously** a covert attempt, conspired by Bishop, Fleming, Layne, et al, to have Akers further imprisoned for six (6) to twelve (12) months in Fayette County [Kentucky] Detention Center, pursuant to provisions of **K.R.S. 403.740** [supra, page 29 hereof], with all previous attempts of those said conspirators to have Akers evicted from 3544 Boston Road, Lexington [Fayette County], Kentucky, having failed. **See also**: herein paragraphs E-12, E-14(d), E-16, E-24, E-33 thru E-44; **K.R.S. 505.010** [supra, page 32 hereof]; and TT#1, B. Taylor/L. Red Corn/R. Overstreet, 10/26/98, 13:46:40, et seq.

[60] Regardless of allegations as to "causation" (see hereinabove paragraphs E-2, E-8, E-28, E-35, E-36, E-41, & E-42), there are seven vertebrae (C1 thru C7) in the cervical area of the human spinal column and five corresponding "discs"

between each. The discs between C5-C6 were removed and those two vertebrae were "fused". Thus, 2 out of 7 vertebrae were fused (i.e., 2/7 or 28.57%) and 1 out of five discs were removed and "frozen" (i.e., 1/5 or 20%) and, therefore, a permanent 20% to 28.57% impairment of mobility in Bishop's neck **resulted from the surgery**. **See also**: TT#1, J. Vaughn, 10/26/98, 16:27:40, 16:31:40, 16:32:10, 16:34:30, 16:36:00, 16:37:49, 16:43:00, 16:47:30, 16:49:00, 16:50:25, 16:51:15, 16:51:40, 16:53:00; TT #2, A. Fulmer, 10/27/98, 10:55:00, 10:55:55, 11:00:20; and TT#2, M. Einbecker, 10/27/98, 16:24:25, 16:26:40, 16:27:25, & 16:33:45.

[61] See: **TITLE 18 U.S.C. § 2** [supra, page 11 hereof], i.e., "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commission, **is punishishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); (continued, page 78 hereof)

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[61] (continued from page 77 hereof): **TITLE 18 U.S.C. § 1341** [supra, page 13 hereof], i.e., "Whoever, **having devised or intending to devise** any scheme or artifice to defraud, **or for obtaining money or property by means of false or fraudulent pretenses**, ...**or attempting so to do**, places in any post office or authorized depository for mail matter, **any matter or thing whatever**, to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be **sent or delivered by any private** or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, **or knowingly causes to be delivered** by such carrier according to the direction thereon, or at the place at which it is directed to be delivered to the person to whom it is addressed, **any such matter or thing**, shall be fined under this title or imprisoned not more than five years, or both." (emphasis added); **TITLE 18 U.S.C. § 1961** [supra, page 14 hereof]: "(1) 'racketeering activity' means...; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), ...section 1503 (relating to obstruction of justice); ...section 1512 (relating to tampering with a witness, victim, or an informant); (2) 'State' means **any State** of the United States, **any territory** or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) 'person' includes any individual, or entity capable of holding a legal or beneficial interest in any property; (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and **any union or group of individuals associated in fact** although not a legal entity; (5) 'pattern of racketeering activity' **requires at least two acts** of racketeering activity, one of which occurred after the effective date of this chapter and at least one of which occurred within ten years after the commission of a prior act of

'racketeering activity'" (emphasis added); **TITLE 18 U.S.C. § 1962** [supra, page 14 hereof], i.e., "(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, **to use or invest, directly or indirectly, any part of such income**, in aquisition of any interest in, **or the activities of which affect**, interstate commerce; (d) It shall be unlawful for any person **to conspire** to violate any of the provisions of subsection (a), (b), or (c) of this section" (emph. added); **TITLE 42 U.S.C. § 1985** [supra, pages 16 & 17 hereof], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State** or Territory, with the intent to deprive any citizen ...equal protection of the laws, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person...to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added)

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50. (a) Having reached an agreement with Bishop by and through Kelly, on September 23, 1994, Akers sold the marital home at 3:30 p.m.; (b) met Kelly at Akers' bank to execute/ implement that agreement, which; (c) included waivers of any and all further claims or damages on behalf of Bishop [see page 4, Article 6, Exhibit "U" hereto]; (d) questioned Kelly about the authenticity of Bishop's signature thereon insofar as such appeared to be a forgery **as notarized by Kelly**; (e) received assurances of Kelly as to Bishop's signature's authenticity; and, upon Kelly's reassurances that Bishop's signature was authentic and that **she was <u>still considering</u> filing "criminal charges" against Akers**; (f) Akers presented a "Cashier's Check" to Kelly for the same amount agreed-upon by all parties[62]; and (g) advised Kelly that Akers was "moving back to Nashville and [had] to be there Monday".

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[62] See: **TITLE 18 U.S.C. § 2** [supra, page 11 hereof], i.e., "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commission, **is punishishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 1341** [supra, page 13 hereof], i.e., "Whoever, **having devised or intending to devise** any scheme or artifice to defraud, **or for obtaining money or property by means of false or fraudulent pretenses**, ...**or knowingly causes to be delivered** by such carrier according to the direction thereon, or at the place at which it is directed to be delivered to the person to whom it is addressed, **any such matter or thing**, shall be fined under this title or imprisoned not more than five years, or both." (emphasis added); **K.R.S. 514.080** [supra, page 37 hereof], i.e., "(1) A person is guilty of theft by extortion when he intentionally obtains the property of another **by threatening to**: (b) **Accuse anyone of a criminal offense**; or (c) **To expose a secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute**; **or** (d) **Use wrongfully his position as a public officer** or servant or employee by performing some act within or related to his official duty, **either express or implied, in a manner affecting some**..." (continued, page 80 hereof)

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[62] **K.R.S. 514.080** (continued from page 79 hereof): "...**person adversely**; (3) Theft by extortion is a Class A misdemeanor unless the value of the **property obtained is three hundred dollars or more**, in which case it is a **Class D felony**" (emphasis added); **K.R.S. 516.030** [supra, page 37 hereof], i.e., "(1) A person is guilty of forgery in the second degree when, **with intent to defraud, deceive**, or injure another, **he falsely** makes, **completes, or alters a written instrument** which is or purports to be or **which is calculated to become or to represent when completed**: (a) a...**contract, assignment**, ...or **other instrument which does or may evidence**, create, transfer, terminate **or otherwise affect a legal right**, interest, obligation, or status; **or (b) A public record or an instrument filed** or required or authorized by law to be filed in or **with a public office or public employee**; (2) Forgery in the second degree is a Class D felony" (emphasis added); **TITLE 18 U.S.C. § 1961** [supra, page 14 hereof], i.e., "(1) 'racketeering activity' means (A) **any act or threat** involving... extortion, ...or **which is chargeable under state law and punishable by imprisonment for more than one year**; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...section 1512 (relating to tampering with a witness, victim, or an informant); (2) 'State' means **any State** of the United States...**any territory** or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) 'person' includes any individual, or entity capable of holding a legal or beneficial interest in any property; (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and **any union or group of**

individuals associated in fact although not a legal entity; (5) 'pattern of racketeering activity' **requires at least two acts** of racketeering activity, one of which occurred after the effective date of this chapter and at least one of which occurred within ten years after the commission of a prior act of 'racketeering activity'" (emphasis added); **TITLE 18 U.S.C. § 1962** [supra, page 14 hereof]: "(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, **to use or invest, directly or indirectly, any part of such income**, in acquisition of any interest in, **or the activities of which affect**, interstate commerce; (d) It shall be unlawful for any person **to conspire** to violate any of the provisions of subsection (a), (b), or (c) of this section" (emphasis added); **TITLE 42 U.S.C. § 1985** [supra, pages 16 & 17 hereof]: "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury ..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State** or Territory, with the intent to deprive any citizen...equal protection of the laws, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person...to the equal protection of the laws; (3)...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added)

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51. Understandably (in view of those facts in hereinabove paragraphs E-31 through E-34, E-37, E-38, E-45, E-46, & E-50), and believing that **all matters with respect to Bishop had been fully-adjudicated and/or resolved**; there being no outstanding/remaining criminal charges against Akers [see "P.S.I. Report", Page 5, Exhibit "V" hereto]; and, as was his fundamental right pursuant to **Article I-Section 9**, the **United States Constitution, as well as § 24** of the **Constitution of Kentucky**, Akers then "migrated" from Lexington, Kentucky, with the remainder of his property (with the exception of his dog and truck) to Nashville, Tennessee, to "start a new life".[63]

52. On October 4, 1994, Akers returned the Akers' son, Alan, to Lexington after Alan had brought Akers' corporate

truck...

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[63] See also: **ARTICLE I-SECTION 9, U. S. Constitution** [supra, page 5 hereof]: "The **migration** or importation of...persons as any of the states...shall think proper to admit, **shall not be prohibited**...; "No bill of attainer or ***ex post facto* law** shall be passed." (emphasis added); **ARTICLE IV-SECTION 2** [id., page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **FOURTEENTH AMENDMENT** [id., pages 10 & 11 hereof]: "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States"; **Ky Const § 1** [supra, page 26 hereof]: **Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ...redress of grievances, bearing arms**: "**All men** are, by nature, free and equal, and **have certain inherent and inalienable rights**, among which may be reckoned: **First**: The right of enjoying and **defending their** lives and **liberties**; **Third**: The right of seeking and pursuing their safety and happiness; **Const § 19 (1)** [supra, page 28 hereof], i.e., "No **ex post facto** law, ...shall be enacted" (emphasis added); **Ky Const § 24** [id.], i.e., "**Emigration** from the State **shall not be prohibited**" (emphasis added); **Ky Const § 26** [id.], i.e., "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto or contrary to this Constitution, shall be void**." (emphasis added)

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to Akers in Nashville, but **did not violate any of the terms or conditions of the foregoing "Domestic Violence Order" and no such violations have been alleged**.

53. On October 11, 1994, a "Decree of Dissolutionment" was entered, in Fayette (Kentucky) Circuit Court, dissolving the marriage of Akers and Bishop [see Exhibit "W" hereto]. As an integral part thereof, the hereinabove "Property Settlement Agreement" was incorporated, recorded, and filed therewith.[64]

54. (a) On October 14, 1994, Akers once again returned to Lexington, Kentucky, to re-license his corporate vehicles. (b) As on October 4, 1994, Akers did not violate any of the terms or conditions of the foregoing "Domestic Violence Order" and no

such violations have been alleged. (c) **Thereafter, Akers vowed to never return to Kentucky**; (d) **Akers did not return to any location within the Commonwealth of Kentucky until extradited to Fayette County therein on October 2, 1995**[65]; and (d) **there are no allegations to the contrary**.

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[64] See hereinabove paragraph E-50(d) & (e); and **K.R.S. 516.030** [supra, page 37 hereof], i.e., "(1) A person is guilty of forgery in the second degree when, **with intent to defraud, deceive**, or injure another, **he falsely** makes, **completes, or alters a written instrument** which is or purports to be or **which is calculated to become or to represent when completed**: (a) a deed, will, or codicil, **contract, assignment**, ...or **other instrument which does or may evidence**, create, transfer, terminate **or otherwise affect a legal right**, interest, obligation, or status; **or (b) A public record or an instrument filed** or required or authorized by law to be filed in or **with a public office or public employee**; (2) Forgery in the second degree is a Class D felony" (emphasis added)

[65] Kentucky authorities apparently relied upon **TITLE 18 U.S.C. § 2265** [supra, page 16 hereof (enacted 09/13/94)], i.e., "**Full faith and credit given to protection orders**: **(a) Full faith and credit.** - Any protection order issued **that is consistent with subsection (b) of**..." (continued, page 83 hereof)

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55. Having resided at the Courtyard Inn and/or Residence Inn, in Brentwood, Tennessee, since September 24, 1994; and having already informed the Akers' son, Alan, of Akers' new address and telephone numbers; Akers moved into his new home in Brentwood, Tennessee, on October 24, 1994.

FACTS SUB JUDICE/ FEDERAL JURISDICTION INVOKED

56. (a) On, or about October 28, 1994, Akers began to receive anonymous telephone calls at his hereinabove residence, during which the calling party would simply hold the phone and remain silent; and (b) Akers having heard that Bishop had been complaining (to several individuals) that she "didn't get anything out of the divorce"[66]; and (c) suspecting that she "needed help"; (d) Akers phoned Allen Rushing (Bishop's boss at CBT and...

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[65] **TITLE 18 U.S.C. § 2265** (continued from page 82 hereof): "... **this section** by the court of one State...(the issuing State...) shall be accorded full faith and credit by the court of another State ...(the enforcing State...) and enforced as if it were the order of the enforcing State..." However, § (b) thereof **clearly states**: "Protection order. - A protection order issued by a State...**is consistent with this subsection [only] if-** (1) such court has **jurisdiction over the parties** and matter under the law of such State...; **and** (2) **reasonable notice and opportunity to be heard is given** to the person against whom the order is sought sufficient **to protect that person's right to due process**. In the case of ex parte orders, **notice and opportunity to be heard must be provided** within the time required by State...law, and **in any event within a reasonable time** after the order is issued, sufficient **to protect the respondent's due process rights**." (emphasis added); **See also**: hereinafter paragraphs E-68, & E-70 through E-77.

[66] **See: K.R.S. 505.010 Entrapment** [supra, page 32 hereof], i.e., "**A person is not guilty** of an offense arising out of a proscribed conduct **when**: (a) **He was induced or encouraged** to engage in that conduct by a public servant-or **by a person acting in cooperation with a public servant seeking to obtain evidence against him for the purpose of a criminal prosecution**; and (b) At the time of the inducement or encouragement, **he was not otherwise disposed to engage in such conduct**. (emphasis added)

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hereinafter "Rushing"), **at his home**, on October 31, 1994, just to inquire as to Bishop's welfare. (e) It was at this time that Akers first learned that Bishop had received surgery on August 31, 1994, and might "file criminal charges" against Akers unless she received more money.[67]

57. The following week, on November 3, 1994, Akers phoned Bishop's attorney (Kelly) and reminded him of their "agreement" of September 23, 1994 [see Exhibit "U" hereto] which waived such...

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[67] **See**: **TITLE 18 U.S.C. § 2. Principals** [supra, page 11 hereof], i.e., "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commission, **is punishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 873. Blackmail** [supra, page

12 hereof], i.e., "Whoever, **under threat** of informing, or as a consideration for not informing, against any law of the United States, **demands...any money or other valuable thing**, shall be fined under this title or imprisoned not more than one year, or both." (emphasis added); **TITLE 18 U.S.C. § 875. Interstate communications** [id.], i.e., "(d) Whoever, **with intent to extort** from any person, firm, association, or corporation, **any money or other thing of value, transmits in interstate** or foreign commerce **any communication** containing any threat to injure the property **or reputation** of...another...**or any threat to accuse...any other person of a crime**, shall be fined under this title or imprisoned not more than two years, or both." (emphasis added); **TITLE 18 U.S.C. § 1961. Definitions** [supra, page 14 hereof], i.e., "(1) 'racketeering activity' means (A) **any act or threat** involving...kidnapping, ...robbery, bribery, extortion, ...**or which is chargeable under state law and punishable by imprisonment for more than one year**; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...section 1343 (relating to wire fraud), ...section 1503 (relating to obstruction of justice); ...section 1512 (relating to tampering with a witness, victim, or an informant); (2) 'State' means **any State** of the United States, the District of Columbia, the Commonwealth of Puerto Rico, **any territory** or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) 'person' includes any individual, or entity capable of holding a legal or beneficial interest in any property; (4) 'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and **any union or group of individuals associated in fact** although not a legal entity; (5) 'pattern of racketeering activity' **requires at least two acts** of racketeering activity, one of which occurred after the effective date of this chapter and at least..." (continued, page 85 hereof)

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[67] **TITLE 18 U.S.C. § 1962** (continued from page 84 hereof): "... one of which occurred within ten years after the commission of a prior act of racketeering activity" (emphasis added); **TITLE 18 U.S.C. § 1962. Prohibited activities** [id.], i.e., "(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, **to use or invest, directly or indirectly, any part of such income**, in acquisition of any interest in, **or the activities of which affect**, interstate commerce; (d) It shall be unlawful for any person **to conspire** to violate any of the provisions of subsection (a), (b), or (c) of this section" (emphasis added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [id.], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party

injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id.], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce,** the right of any person, or class of persons, to the equal protection of the laws, (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy,** whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added); United States Constitution: **ARTICLE I-SECTION 9** [supra, page 5 hereof], i.e., "[1.] The **migration** or importation of such persons as any of the states...shall think proper to admit, **shall not be prohibited**..." (emph. added); **ARTICLE IV-SECTION 2**: [id. page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emph. added); **FOURTH AMENDMENT** [id., page 7 hereof], i.e., "The right of the people to be secure in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated, and **no Warrants shall issue, but upon probable cause**" (emphasis added); **FIFTH AMENDMENT** [id.], i.e., "No person shall **be held** to answer for ...infamous crime, **unless on a presentment or indictment** of a Grand Jury, **nor shall any person be subject for the same offence to be twice put in jeopardy** of life or limb"; ...**nor be deprived of...liberty**, or property, **without due process of law**" (emph. added); **FOURTEENTH AMENDMENT** [id., page 10 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of..." (continued, page 86 hereof)

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further compensation to Bishop and again questioned whether, in fact, the purported signature of Bishop thereon was authentic.[68]

58. Having been substantially alarmed by the statements of Rushing and Kelly, Akers then attempted to contact Bishop on November 4, 1994, in an effort to ascertain the truth. However, Bishop would either hang up immediately or divert

Akers' calls to other bank personnel, and a new warrant was, apparently, issued against Akers for "Contempt of Court". **Akers was never served with this warrant and was unable to confirm its existence until August 9, 1995.**

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[67] **FOURTEENTH AMENDMENT, United States Constitution** (continued from page 85 hereof): "... citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law;** nor deny any **person within its jurisdiction equal protection of the laws**" (emph. added); **Constitution of Tennessee** [supra, page 18 hereof, et seq.]: **ARTICLE 1, SECTION 8. No man to be disturbed by law.** - "That **no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges,** outlawed, **or exiled or in any manner destroyed or deprived of his life, liberty, or property, but by the judgement of his peers or the law of the land.**" (emph. added); **ARTICLE 1, SECTION 14** [id.], i.e., **"Prerequisites to criminal charge** - That **no man shall be put to answer any criminal charge but by presentment, indictment or impeachment.**" (emphasis added); **Tennessee Criminal Code** [supra, page 21 hereof], i.e., **"39-17-309. Civil rights intimidation.** - (a) The general assembly finds and declares that **it is the right of every person regardless of race, color,** ancestry, or national origin, **to be secure and protected from fear, intimidation, harrassment and bodily injury caused by the activities of groups and individuals.** The general assembly recognizes the **constitutional right of every citizen to harbor and express beliefs on any subject** and to associate with others who share similar beliefs. The general assembly further finds that the advocacy of unlawful acts by groups or individuals against other persons or groups for the purpose of inciting and provoking damage to property and bodily injury or death to persons is not constitutionally protected, poses a threat to public order and safety, and should be subject to criminal sanctions. (b) **A person commits the offense of intimidating others from exercising civil rights who:** (1) Injures or threatens to injure or coerces **another person with the intent to unlawfully intimidate another from the free exercise or enjoyment of any right or privilege secured by the constitution or laws of the state of Tennessee."**

[68] See hereinabove paragraph E-50(d), E-53, & E-56(e).

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59. On December 8, 1994, Akers met Deborah L. Harvil (Akers' current fiance' and hereinafter "Harvil") in Brentwood, Tennessee. Akers and Harvil quickly developed a quasi-marital relationship and have maintained that relationship since early

March of 1995.

60. Reflecting upon those facts in hereinabove paragraphs E-4 through E-6, E-16, E-17, E-28(b), and E-53, and being reluctant to proceed with his relationship with Harvil until those were resolved[69]; Akers phoned Bishop on, or about December 15, 1994, and inquired as follows: "Have I lost you forever, Carolyn?" Bishop responded: "Yes, Gorden, you've lost me forever." A few hours later, Akers' mother (Woodsie) phoned him and frantically informed Akers that the police had just been to her house "looking for" Akers with "some kind of papers".

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[69] See United States Constitution: **ARTICLE I-SECTION 10** [supra, page 6 hereof]: "**No state shall...pass any** bill of attainer, ***ex post facto* law** or law impairing the obligation of contracts, or grant any title of nobility." (emphasis added); **FIRST AMENDMENT [supra, page 7 hereof]**: "Congress shall make no law respecting ...religion, or prohibiting the free exercise thereof; **or abridging freedom of speech...**; [or the right to] petition the government for redress **of grievances**"; (emphasis added); **FOURTEENTH AMENDMENT** [supra, page 10 hereof]: "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States"; **TITLE 42 U.S.C. § 1985** [supra, page 16 hereof]. **Conspiracy to interfere with civil rights**: (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or **defeating, in any manner, the due course of justice in any State** or Territory, with **the intent** to deprive any citizen...equal protection of the laws, or to injure him **or his** property for lawfully enforcing, or **attempting to enforce**, the right of any **person**, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to**..." (continued, page 88 hereof)

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61. On January 31, 1995, Akers' mother again phoned Akers in Nashville, and frantically informed him that the police had yet again just been to her residence looking for Akers. Akers...

[69] **TITLE 42 U.S.C. § 1985** (continued from page 87 hereof): "... **be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators; (emphasis added). See also: **Tennessee Constitution**: **ARTICLE 1, SECTION 3. Freedom of worship** [supra, page 18 hereof], i.e, "That all men have a natural and indefeasible right to worship Almighty God to the dictates of their own conscience; ...**that no human authority can, in any case whatsoever, control or interfere with the rights of conscience**" (emphasis added); **Tennessee Criminal Code** [supra, page 21 hereof], i.e., "**39-17-309. Civil rights intimidation**. - (a) The general assembly finds and declares that **it is the right of every person regardless of race, color**, ancestry, or national origin, **to be secure and protected from fear, intimidation, harassment and bodily injury caused by the activities of groups and individuals**. **It is not the intent of this section to interfere with the exercise of rights protected by the constitution of the United States**. The general assembly recognizes the **constitutional right of every citizen to harbor and express beliefs on any subject**... (b) **A person commits the offense of intimidating others from exercising civil rights who**: (1) Injures or threatens to injure or **coerces another person with the intent to unlawfully intimidate another from the free exercise or enjoyment of any right or privilege secured by the constitution or laws of the state of Tennessee.**" (emphasis added); **Ky Const § 1** [supra, page 26 hereof]. **Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ... redress of grievances, bearing arms**: "**All men** are, by nature, free and equal, and **have certain inherent and inalienable rights**, among wich may be reckoned: **First**: The right of enjoying and **defending their** lives and **liberties**; **Second**: The right of worshipping Almighty God **according to the dictates of their consciences**; **Third**: The right of seeking and pursuing their safety and happiness; **Fourth**: The right of **freely communicating their thoughts and opinions**; **Fifth**: The right of acquiring and **protecting property**; ...**Seventh**: The right to bear arms in defense of themselves..." (emphasis added); **Ky Const § 5** [supra, page 26 hereof]: "**No human authority shall**, in any case whatever, **control or interfere with the rights of conscience**" (emphasis added); **Const § 19 (1)** [supra, page 28 hereof]: "No **ex post facto** law, ...shall be enacted" (emph. added); **Ky Const § 24** [supra, page 28 hereof]: "**Emigration** from the State **shall not be prohibited**" (emphasis added); **Ky Const § 26** [id.]: "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**." (emphasis added)

responded by calling Bishop at her office and stating: "You G- - d- - bitch, you have a law suit staring you in the face that you can't handle." Bishop then immediately hung up on Akers. [see Exhibit "X" hereto]

62. Having "cooled down", and regretting his foul language on the previous day, Akers phoned Bishop on February 1, 1995, and stated as follows: "The truth be known, Carolyn, I still love you and don't want any further problems for either of us. I just want you to leave my mother alone and stop telling lies on me." Apparently, Bishop hung up on Akers and began diverting his calls to other bank personnel. [Exhibit "Y" hereto]

63. As an apparent "follow-up" procedure, the police again appeared at Akers' mother's home in Lexington, March 21, 1995, and unlawfully conducted a full search of that home. Following yet another frantic call from his mother, Akers phoned Bishop at her office and asked: "Do you think you have enough warrants out for my arrest?" As usual, Bishop immediately hung up on Akers.

64. With the exception of those telephone calls detailed in hereinabove paragraphs E-52, & E-54 through E-57, which were all placed from Akers home in Brentwood, Tennessee, [see TT#3, D. Harvil, 05/21/96, 15:27:35], there were **no other incidents of contact or communication**" between Akers and Bishop (<u>and none have been alleged</u>); **nor was Akers ever physically within <u>200 miles of Bishop</u>, her family, her church, her workplace, her home, <u>or otherwise</u>** [see TT#1, L. Red Corn, 05/20/96, 11:06:35]; **nor did Akers ever knowingly or intentionally**...

"threaten" Bishop, <u>in any manner</u> (other than with a civil lawsuit), **during the period of time specified in Akers' original indictment <u>or amended indictment</u>** for "Stalking in the First Degree".

65. (a) On May 5, 1995, Bishop sought to extend the hereinabove "Domestic Violence Order" which was due to

expire, **by its own language**, on May 18, 1995; (b) Notwithstanding Bishop's actual knowledge that Akers was residing in Nashville, Tennessee, and **had never resided with his mother in Lexington, Kentucky, home**, Bishop purported to have Akers "served" at his mother's address; (c) Bishop then alleged that there was a "weapon involved" in Akers' case [see Exhibit "Z" hereto]; and (d) As the direct result of Bishop's clearly fraudulent misrepresentations with respect to Akers' whereabouts and residence, Akers was never served with a "Summons" directing him to appear in Fayette District Court on May 17, 1995. [see "Domestic Violence Summons", stamped "Expired", Exhibit "AA"]

66. (a) Notwithstanding those facts in hereinabove paragraph E-65, Fayette District Judge Thomas Clark conducted a hearing on May 17, 1995, **at which Akers was not present**[70], and...

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[70] See also: U.S. v. Casciano, **927 F.Supp. 54 N.D.N.Y. 1996**, i.e., "11. ...**For purposes of crossing a state line** with intent **to engage in conduct in violation of protective order, if court issuing order has failed to obtain personal jurisdiction** over defendant by service of process, **then order was invalid and prosecution cannot survive**. 18 U.S.C.A. § 2262(A)(1); 12. Due process clause requires that notice be reasonably calculated, **under all circumstances**, to apprise interested parties of penalty of an action and afford them an opportunity to present their objections. **U.S.C.A. Const. Amend. 5**." (emphasis added)

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invalid pursuant to Akers' "due process rights"[71] secured by the Fifth & Fourteenth Amendments to the United States Constitution.

67. On Father's Day weekend, 1995, Akers' mother (Woodsie) and son (Alan) drove to Nashville to visit Akers and Harvil and, before leaving to return to Lexington, Woodsie informed Akers that the police had yet again been to her home "with some kind of papers for [Akers]".

68. On July 7, 1995 (some seven weeks after "expiration" of the only "Domestic Violence Order" of which Akers was

aware), Akers telephoned Bishop at her office and made the following statement: "I told you to leave my mother alone. I'm going to go for the throat now. I'm going to have to go ahead and sue you." [see Exhibit "BB" hereto]

69. In July of 1995, Akers and Harvil established Cadre Construction Corporation (hereinafter "Cadre"), a "successor-in-fact" to hereinabove Coleman/Akers & Akers, Inc. ("C/AA"), and incorporated said Cadre Construction Corporation under the laws of the State of Tennessee on August 2, 1995. [see "Articles of Incorporation", Exhibit "CC" hereto]

70. On August 9, 1995, Akers was arrested near Nashville, Tennessee, for his first time ever "D. U. I." charge, and the resulting "N. C. I. C." report revealed that Akers was charged in the State of Kentucky with "4th Degree Assault, Contempt of Court, Harassing Communications, and potentially Stalking" [see...

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[71] See: **U.S. Const. Amends. 5 & 14** [supra, pages 7 & 10, respectively]; and footnote [5] [id., page 8 hereof]

Exhibit "DD" hereto]. That same evening, Akers was arraigned as a "Fugitive of Justice" and remanded to custody pending a bond hearing in Nashville General Sessions Court.

71. On August 15, 1995, Akers was released from custody on a $60,000 Full Cash Bond and a "Probable Cause Hearing" was set for September 21, 1995, on the "fugitive" charges. It was at that time (08/15/95) that Akers first learned of the "extension" of the "Domestic Violence Order" as detailed in the hereinabove paragraphs E-59 & E-60. **After August 15, 1995, Akers has not, even remotely, violated any of the terms or conditions of that Order and no such violations have been alleged.**

72. On August 22, 1995, Bishop filed/entered a "Criminal Complaint" [Exhibit "EE"], **fraudulently alleging** that Akers had "unlawfully committed the offense [of] K.R.S. 508.140 Stalking in the First Degree"[72] and as grounds therefor that Akers had

intentionally stalked her from November of 1994 through August 22, 1995; that Akers had **"made threats" to her "of serious physical injury and death"**; that she had **"an active Domestic Violence Order on [Akers]"**; and that Akers had "repeatedly made telephone calls" to [Bishop] and members of her family, friends, ...

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[72] **The required elements** of "Stalking in the First Degree -- 508.140" are as follows: "(1) **Intentionally** (2) Stalk another person; and (3) Make an explicit or implicit threat **with intent** to place that person in **reasonable fear** of: (a) Sexual contact as defined in KRS 510.010, or (b) Serious physical injury, or Death; and (4)(a)(i) A protective order or another judicial order as provided in KRS Ch 403 has been issued to protect same victim, and (ii) **Defendant has been served with the summons or order or been given actual notice**; [or (b)(i), (c)(i), and (d) **do not apply**]; and (5) **Venue**." [West Group/Westlaw Publishing, Kentucky Revised Statutes, 1995 Edition (emphasis added)]. **See also**: Hereinabove paragraphs E-51 thru E-68.

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and/or associates "threatening to do serious physical injury" to her and others "such as that" [Akers] "[was] not done with [her]" and **"was going to go for [her] throat"**.[73]

73. As well on August 22, 1995, then Fayette (Kentucky) District Judge Thomas D. Clark (the same Judge Clark who issued the original "Domestic Violence Order" and then granted its "extension" in Akers absence, see hereinabove paragraphs E-29 through E-31, E-35, E-59 & E-60), issued a "Warrant for Arrest" [see Exhibit "FF"] of Akers pursuant to the "Criminal Complaint" as detailed in hereinabove paragraph E-65.

74. On August 29, 1995, Fayette County Attorney Margaret H. Kannensohn issued an "Application for Requisition of James Gorden Akers" [Exhibit "GG"] charging Akers "with the crime(s) of Stalking 1st in violation of KRS 508.140, **having committed an act or acts on or about the 1st day of February, 1995, in the State of Tennessee**, which intentionally resulted in the commission of said crime(s) in Fayette County, Kentucky". (see hereinabove paragraphs E-56 thru E-58, E-60, **esp. E-61**, & E-62).

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[73] This comment was **intentionally** taken **completely** out of context by Bishop inasmuch as it was **clearly made by Akers with reference to Akers' statement on January 31, 1995, in effort to obtain Bishop's agreement to "stop telling lies on [Akers]" and stop harassing Akers' elderly mother** by sending police officers to her house for unlawful purposes [See hereinabove paragraphs E-50(g), E-51, E-53, & E-56 through E-63 (**esp. E-61**)]; and as a covert means for Bishop to bar Akers from pursuing Akers **legal action against Bishop** for her unlawful acts outlined in hereinabove paragraphs A-2, A-3(a) thru (c); E-11, E-14, E-16, E-18, E-24, E-30, E-32 thru E-36, E-38 thru E-42, E-43(a) thru (c), E-44, E-47, E-49, E-50(f), E-56(b), E-60, E-63, E-65(b) thru (d), E-66, & E-67. It is also **crucial herein** to recognize that this "phrase" is used commonly in modern society among sports commentators **and numerous other "high-profile" individuals**; and that Bishop has heard Akers use that phrase, **in a figurative sense, on numerous occasions, since the early 1970's**.

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75. On August 30, 1995, a "Governor's Warrant" was issued by Kentucky Governor Brereton Jones, stating that "James Gorden Akers a/k/a James Gorden Akers, as shown by Criminal Complaint/Affidavit and Warrant for Arrest [is charged with] the crime(s) of Stalking, First Degree, **committed while outside the state** which resulted in the commission of a crime in the County of Fayette, Commonwealth of Kentucky". [see Exhibit "HH" hereto,] (emphasis added)

76. On September 14, 1995, Tennessee Governor Don Sunquist issued a "Rendition Warrant" [Exhibit "II"] stating: "WHEREAS, it has been represented to me by the State of Kentucky, that James Gordon Akers a/k/a James Gorden Akers stands charged by Criminal Complaint/Affidavit & Warrant of Arrest in said State with having committed the crime(s) of Stalking, First Degree, **committed while outside the State of Kentucky**, resulting in the commission of crime in the State of Kentucky and said fugitive is a fugitive from the justice of said State and has taken refuge in the State of Tennessee". (emphasis added)

77. On September 21, 1995, Akers appeared in Court for the "Hearing" as detailed in hereinabove paragraph E-71 [see Exhibit "DD"). Akers and his attorney were prepared to

challenge,[74] by writ of habeas corpus, Akers "fugitive" status and the validity...

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[74] Kentucky authorities, esp., the Fayette County [Kentucky] Attorney's office and [Kentucky] Commonwealth's Attorney's office **refused** to provide Akers and/
or his attorneys with specific dates on which the alleged stalking prior had occurred prior to extradition and, thereby, **effectively foreclosed and barred** Akers' assertion of a **writ of habeas corpus as permitted by both the U.S. and Tennessee Constitutions**. [see CP#1, C. Perkins, 11/10/95, 13:11:11, et seq.]

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of the charges in Kentucky [see Exhibit "JJ" hereto]. Akers was immediately arrested, however, before the Judge was brought in and Court was even convened. Akers was then remanded to custody until extradited to Fayette County, Kentucky, on October 2, 1995, notwithstanding the best efforts of Akers and his attorneys to resolve/discharge all matters amicably.[75] [see Collective Exhibits "KK" hereto]

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[75] "**Interstate extradition** involves a significant...restraint of liberty and, as such, **necessitates a showing of probable cause**." **Wellington v. State of S.D., D.C.S.D.1976, 413 F.Supp., 151**. (emphasis added) See Also: **Walton v. State, 1977, 566 P.2d 765, 98 Idaho 422**; "**Probable cause** to find that a person to be extradited is a **fugitive from justice** in demanding state is a **condition precedent to valid extradition**." **Ross v. Hegstrom, 1969, 254 A.2d. 556, 107 Conn. 403** (emphasis added); "In determining whether a party named in a requisition and rendition warrant is a fugitive from justice, a finding must be made in substance that a crime is alleged, that the named party committed the crime and fled from the demanding jurisdiction, and **it must appear that accused was within the demanding state when crime was committed** so as to constitute him a fugitive by his commission of crime and his **later flight**." **State v. Phillips, 1960, 162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63** (emphasis added); "In extradition proceedings, inquiry is restricted to whether accused is substantially charged with crime in the demanding state, **and whether he was physically in the demanding state at time crime charged is alleged to have been committed**." **People v. ex rel. Johnson v. Ruthazer, 1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905** (emphasis added); **Clayton v. Wichael, 1966, 141 N.W. 2d 538, 258 Iowa**

1037; Wigehert v. Lockhart, 1946, 166 P.2d 988, 114 Colo. 485; Ex parte Foster, 1936, 61 P.2d 37, 60 Okla.Cr. 50; "No person may be lawfully removed from one state to another by virtue of this [Sec. 2, cl. 2], unless...; 2. He has fled from justice; ..., and if either of these conditions are absent, the Constitution affords no warrant for a restraint of the liberty of any person." Pierce v. Creecy, Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113; Ex parte Morgan, D.C.Cal. 1948, 78 F.Supp. 756, affirmed 175 F.2d 404, certiorari denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed. 503; "Under this [Sec. 2, cl. 2] and Federal Extradition Act, 18 U.S.C.A. former § 662 [now §§ 3182, 3195], an extradition is unwarranted unless the accused is a fugitive from justice, and a 'fugitive from justice' is a person who commits a crime within a state and withdraws himself from such jurisdiction without waiting to abide the consequences of his act". Ex parte Montoya, 1943, 135 P.2d 281, 170 Or. 499. (It is apparent that the Kentucky authorities relied on Kentucky v. Dennison, 1861, 65 U.S. 66, 24 How. 66, 16 L.Ed. 717; Appleyard v. Massachusetts, Mass1906, 27 S.Ct. 122, 203 U.S. 222, 51 L.Ed. 161; Ex parte Williams, 1946, ..." (continued, page 96 hereof)

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78. On September 28, 1995, Akers' case was set for hearing before hereinabove Judge David Hayse in the "Domestic Relations Division" of Fayette District Court (as signified by the "Case 94-D-00396-001"). The hereunto relevant portions of the Court "Calender" [Exhibit LL"] for that proceeding are as follows:

"EVENT:	**COURT TRIAL** ***CONTEMPT FORTHWITH ORDER ARREST** ***IN CUSTODY** ***25,000 FC/BOND**
PROCEEDINGS:	**cont 10-3-95 930 for county to determine if Double Jeopardy, Subp Pet."**

79. On October 3, 1995, Akers was ordered remanded to the Fayette County Detention Center upon an "Order of Commitment" [Exhibit"MM" hereto (**"Case No. 94-D-00396-001"**)] "having been sentenced on the charge of 'Violation of Protective Order'".[75]

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[74] "**Interstate extradition** (continued from page 95 hereof): "...**21 N.W.2d, 593, 71 S.D. 95**; **Olso v. Thurston, Me.1978, 393 A.2d 1320**; and, especially, **Com. ex rel. Marshall v. Gedney, 1975, 352 A.2d 528, 237 Pa.Super. 372, affirmed 386 A.2d 942, 478 Pa. 299**, as authorities for Akers' extradition. Those cases, however, do not encompass, ***inter alia***, "**fraud**" [see **TITLE 18 U.S.C. § 1341 and corresponding footnote** [4], page 11 hereof]; "**conspiracy**" [see **TITLE 42 U.S.C. § 1985** and corresponding footnotes [7], [8], & [9], pages 13 & 14 hereof]; and/or "**malice**", which is defined as: "The **intentional** doing of a wrongful act without just cause or excuse, **with an intent to inflict an injury** or under circumstances that the law will imply an evil intent." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998, emphasis added].) **See also**: **TITLE 18 U.S.C. § 1201. Kidnapping** [supra, page 12 hereof].

[75] **See also**: **K.R.S. 403.763**, i.e., "(1) A person is guilty of **violation of a protective order when he intentionally violates the provisions of an order issued pursuant to KRS 403.715 to 403.785 with which he has been served or has actual notice**. ...(2) Violation of a protective order is a **Class A misdemeanor**."; and **K.R.S. 403.760(5)** [supra, page 30 hereof], i.e., "**Civil proceedings and criminal proceedings are mutually-exclusive**. **Once either has been initiated, the other may not be undertaken regardless of the outcome of the original proceeding**." (emphasis added)

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80. As well on October 3, 1995, Akers' case resumed before Fayette [Kentucky] District Court Judge Julia Tackett [see "Calender", Exhibit "NN"]. Hereunto relevant portions of that proceeding include, but are not limited to, the following:

> "**PROCEEDING:** **...Possible Double Jeopardy...**
> **Am: 26,000 F/C property...Bond"**

Akers' mother (Woodsie) then posted the hereinabove "$26,000 Property Bond, Akers was released from custody and, promptly, returned to Nashville, Tennessee, with Harvil. Akers was scheduled to return to Courtroom 3, Fayette District Court on November 10, 1995. [see Court Document/Bail Bond, Exhibit "OO"]

81. On November 6, 1995, Bishop and Fayette (Kentucky) Assistant Commonwealth's Attorney, Lou A. Red

Corn (hereinafter "Red Corn"), went before the Fayette County Grand Jury seeking an indictment of Akers on one (1) count each of "First Degree Stalking and "First Degree Assault". Hereunto relevant portions of the "Transcript" (Exhibit "PP" hereto) of that proceeding include, **but are not limited to**, the following:

Unknown Speaker: Do you swear or affirm that the testimony you are about to give is the truth?

[Bishop]: I do. (Page 33, lines 4 thru 8)

[Bishop]: And so then all of a sudden he jumped up out of the bed and came over to my side, **he grabbed me by the hair of the head** and he pulled me out of the bed, and **he was kicking me, and he was hitting me with his fist in the mouth**. He drug me ov[illegible] in the hall and he was hitting me and kicking me, and **it all**...

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happened so fast I don't know what all happened, but there was a big hole in the wall and evidently he knocked me through the wall. (Page 37, lines 2 through 14, emphasis added)[76]

[Bishop]: I think got about an hour's sleep and I got up the next morning and tried to cover my bruises with makeup **and I went to work the next morning**. (Page 39, lines

13 through 16)[77] (emph. added)

Red Corn: Tell us about your injuries.

[Bishop]: Um, I had -- I had a busted lip, I had bruises on my legs, I wasn't sure of the extent of my injuries. Then a couple of days later I started having pain in my right arm and my neck started bothering me and I wasn't sure what was going on. And I ended up going to the doctor, **Dr. Fulmer** (Page 40, lines 13 through 22) and he **saw my bruises and he said, "I'm going to have to report this**." And --(Page 41, lines 1 through 3)[77]

Red Corn: What did the doctor say was wrong with you?

[Bishop]: He -- he sent me to have a -- a test done at the hospital. An MRI at Central Baptist.

Red Corn: And what did the MRI show? (Page 41, lines 14 through 21)

[Bishop]: The MRI showed that there were two ruptured disks in my neck, **one of them was ruptured into my spinal cord**. And he said it was -- **he said, "What happened, how" -- he said, "Something like this just couldn't happen**." I guess he wanted to know what happened that made me -- my neck had been...

[76] See also: TT#2, J. Preston, 10/27/98, 14:26:50, 14:36:05

[77] Note sharp contrast to Bishop's testimony in hereinabove paragraphs E-32 and E-38.

injured like that. And **when I told him exactly what had happened he said that was the reason, it was from when he had beat me up that night.**[78] (Page 42, lines 1 through 14, emphasis added)

Red Corn: When did you have your surgery?

[Bishop]: We ended up doing the surgery on August 30th.

Red Corn: Now, you got that Emergency Protective Order as a result of the assault, is that right? (Page 45, lines 21 thru 23)

[Bishop]: They -- when I went to court then I got the Emergency Protective Order. They gave -- they gave him a choice of spending six months in jail or going to Hazelden to an Alcohol Treatment Center. (Page 46, lines 19 thru 24)

Red Corn: During that time, from August until November 1st, did he attempt to contact you?

[Bishop]: From August to November [1994]?

Red Corn: Mm-hm. (affirmatively)

[Bishop]: Um -- I don't think so. (Page 47, lines 11 through 19)

Red Corn: Well, what kind of things would he say that frightened you?

[Bishop]: -- the biggest thing he said that frightened me the most was he said I'm a -- I won't say the words he said, but - uh -

Red Corn: Did he use a lot of profanity? (Page 49, lines 11 thru 21)

[Bishop]: A lot of profanity. And he would say "You haven't seen anything yet." And then he said that -- "I'm going to go...

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[78] See hereinabove paragraphs E-35 for **sharply contrasting testimony/view of Dr. Adrian Fulmer**.

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for your throat now," and he called me a name. And that really frightened me. (Page 50, lines 1 through 6)

Red Corn: Now, Carolyn -- uh -- what -- what did you -- what came to your mind when he told you he was going to go for your throat?

[Bishop]: As soon as he said that I thought

of a picture of me that used to be on the chest.

Red Corn: Is this the picture that you're talking about? (Page 51, lines 23 & 24)

[Bishop]: Yes.

Red Corn: And where did you find this picture?

[Bishop]: **I found it downstairs in the closet in a paper bag.** (emphasis added)

Red Corn: And I assume the picture was not in this condition when you last saw it.

[Bishop]: No, it wasn't, it was sitting on the chest. And I found it in a paper bag with broken glass in the bag -

[Bishop]: **...He had broken it and evidently had taken the glass and he had poked out my eyes and it looked like he slit my throat and -- and done all that to my picture, and I thought of that picture when he said he was going to go for my throat. It scared me.** (Page 52, lines 1 through 23; & Page 53, lines 1 through 6)[79] (emph. added)

Red Corn: Did these calls continue through November, December, January and

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[79] **Akers had no involvement in any such damage** to said "picture"; Akers has

no knowledge as to how any such damage may have occurred; and said "picture" was in **considerably better condition when last seen by Akers** and his mother, Woodsie Akers [see TT #3, 10/28/98, 09:23:00, et seq. (first trial), and TT #3, 10/27/98, 17:49:45, et seq. (second trial);] See also: Title 18 U.S.C. §§ 1503 & 1512 (supra, page 9 hereof); **K.R.S. 524.100** (id., page 19 hereof); and TT#3, L. Red Corn, 05/22/96, 10:04:15, et seq.

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February? (Page 56, Lines 21 - 23)

[Bishop]: Yes, they did. (Page 57, line 1)

Red Corn: Carolyn, back to your neck injury, how is your neck, how is your neck today?

[Bishop]: No.

Red Corn: Is your mobility or your movement -- is it fluid or as easy as it was before he assaulted you?

[Bishop]: No. (Page 59, lines 4 thru 20)

Unknown Speaker: Are you in a great deal of pain?

[Bishop]: Not a great deal, but when it – when it rains or the weather is bad like – then it hurts.[80]

Red Corn: Has Dr. Vaughn and your other physicians done everything they're going to do to fix or cure the problem?

[Bishop]: Yes.

Red Corn: So this is how it's going to be for

the rest of your life?

[Bishop]: Right. Dr. Vaughn gave me some -- an anti-inflammatory medicine for pain, but that's all they can do. (Page 60, lines 1 thru 21)

Based solely upon Bishop's and Red Corn's misrepresentations, which were clearly erroneous **and fraudulent** in view of those facts in hereinabove paragraphs E-2, E-8, E-11 through E-14, E-16, E-19 through E-36, E-38 through E-47, E-51 through E-54, ...

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[80] These are **classic symptoms of "arthritis"** and are **shared by hundreds of millions of persons around the world including Akers and, most likely, even members of this Honorable Court**. **See also**: TT#1, J. Vaughn, 05/20/00, 13:46:40, et seq.; and TT#1, J. Vaughn, 10/26/98, 16:27:40, 16:37:49, 16:47:30, 16:49:00, 16:50:25, 16:51:15, 16:51:40, & 16:53:00.

E-56 through E-66, & E-68, the Fayette County (Kentucky) Grand Jury returned an indictment against Akers [Exhibit "A" hereto] charging that:

> COUNT 1:
>
> On or about the 4th day of May, 1994, in Fayette County, Kentucky, the above named Defendent assaulted Carolyn Patrick Akers with his hands causing serious physical injury;[81]
>
> COUNT 2:
>
> From November 1994 until August 1995, in Fayette County, Kentucky, the above named defendant committed stalking in the first degree by intentionally stalking Carolyn Patrick Akers when he contacted her for no legitimate purpose, made explicit or implicit threats of serious physical injury or death while said James G. Akers was under a Domestic Violence

Order to have no contact with Carolyn Patrick Akers. (emphasis added)[82]

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[81] See: **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally** [supra, page 13 hereof], i.e., "(a) Whoever **corruptly...endeavors to influence or impede any grand or petit juror**, or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emph. added); **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant** [id., page 14 hereof], i.e., "(b) Whoever knowingly uses **intimidation...or corruptly pursuades** another person, **or attempts to do so**, or engages in misleading conduct toward another person, **with intent** to-- (1) **influence**, delay, **or prevent the testimony of any person** in an official proceeding; (2) **cause or induce any person to**-- (A) withhold testimony, or withhold a record, document, or other object from an official proceeding; (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's integrity** or availability in an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both." (emph. added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to**..." (continued, page 103 hereof)

[82] See: **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally** [supra, page 13 hereof], i.e., "(a) Whoever **corruptly...endeavors to influence or impede any grand or petit juror**, or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emph. added); **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant** [id., page 14 hereof], i.e., "(b) Whoever knowingly uses **intimidation...or corruptly**..." (continued, page 104 hereof)

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[81] **TITLE 42 U.S.C. § 1983** (continued from page 102 hereof): "...**be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id.] (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice**

in any State or Territory, with the intent to deprive any citizen...equal protection of the laws, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added). **See also**: **Ky Const § 13**: [supra, page 27 hereof], i.e, "**No person shall**, for the same offense, **be twice put in jeopardy** of his life and limb..." (emphasis added) and corresponding footnote [26] thereto, i.e., "**Fifth Amendment, U. S. Constitution** [supra, page 6 hereof]; **Sherley v. Commonwealth, 558 SW(2d) 615 (Ky 1977)**, i.e., "Where Commonwealth used the **same evidence** of force causing serious physical injury to elevate offense..., defendant was placed in double jeopardy by conviction of first degree assault on the basis of the same physical injury; ...K.R.S. 505.020, 506.010(4)(a), 508.101(1)(a), 510.040(1)(b), (2)" (emphasis added); **Crawley v. Kunzman, 585 SW(2d) 387 (Ky 1979)**, i.e., "[R]ight of appeal is not [an] adequate remedy against double jeopardy. U.S.C.A. Const. Amend. 5" (emph. added); and **Klee v. Lair, 621 SW(2d) 892, (Ky 1981)**, i.e., "[D]efendant's having been found guilty of **lesser included offense**...would **prohibit** him from being tried a second time for major offense." (emph. added); **Ky Const § 26** [supra, page 28 hereof], i.e., "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**" (emphasis added) and corresponding footnote [30] thereto, i.e., "**These very same concerns, and safeguards against them**, were addressed by United States Supreme Court Justices Douglas & Marshall in landmark decision **North Carolina v. Pearce, 89 S.Ct. 2089 (1969)** [supra, page 6 hereof]. **See also**: **801 SW(2d) 321 (Ky 1990), Ingram v Commonwealth**, i.e., '**The Kentucky Constitution is superordinate to legislative intent**...'" (emphasis added); **K.R.S. 403.7505 (2)** [supra, page 30 hereof], i.e, "(a) '**Domestic violence**' is a pattern of coercive control which **includes physical**, sexual, psychological, and environmental **abuse, and is considered criminal conduct**" (emphasis added) in conjunction with hereinabove paragraphs E-31(tt), (uu), & (vv) through E-42, and corresponding footnotes [50], [51], [53], & [54] thereto. **Notwithstanding, see**: **K.R.S. 500.050 Time limitations**: [supra, page 31 hereof], i.e., "(2) Except as otherwise specifically provided, the..." (continued, page 104 hereof)

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[81] **K.R.S. 500.050 Time limitations** (continued from page 103 hereof): "... **prosecution of an offense other than a felony must be commenced within one year after it is committed**" (emph. added) in conjunction with **K.R.S. 508.030**

Assault in the fourth degree: [id., page 35 hereof], i.e., "(1) A person is guilty of assault in the fourth degree when: (a) He **intentionally or wantonly causes physical injury** to another person; **or (b) With recklessness he causes physical injury** to another person **by means of a deadly weapon or a dangerous instrument**. (2) Assault in the fourth degree is **a Class A misdemeanor**" (emphasis added) and K.R.S. **508.040 Assault under extreme emotional disturbance**: [id.], i.e., "(1) In any prosecution under KRS 508.010, 508.020, or 508.030, in which intentionally causing physical injury or serious physical injury is an element of the offense, a defendant may establish in mitigation that he acted under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of KRS 507.020. (2) An assault committed under influence of extreme emotional disturbance is: (b) A Class B misdemeanor when it would constitute an assault in the fourth degree if not committed under the influence of extreme emotional disturbance" and hereinabove paragraphs E-31 (tt), (uu), & (vv) through E-42, and corresponding footnotes [50], [51], [53], & [54] thereto and footnote [7] [supra, page 13 hereof], i.e., "**Fraud**" defined: "A **false representation of a matter of fact**, whether by words or by conduct, **by false or misleading allegations, or by concealment of that which should have been disclosed**, which deceives and is intended to deceive another so that he shall act upon it to his legal injury; A generic term, embracing all multifarious means which human ingenuity can devise, ...to get advantage over another by false suggestions or **by suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false**, whether it be direct falsehood or by innuendo, by speach or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

[82] **TITLE 18 U.S.C. § 1512** (continued from page 102 hereof): "...**persuades** another person, **or attempts to do so**, or engages in misleading conduct toward another person, **with intent** to-- (1) **influence**, delay, **or prevent the testimony of any person** in an official proceeding; (2) **cause or induce any person to**-- (A) withhold testimony, or withhold a record, document, or other object from an official proceeding; (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's integrity** or availability in an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both." (emph. added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id.] "(2) If **two or more**..." (continued, page 105 hereof)

82. As well, on November 6, 1995, a "True Bill" was signed by the Grand Jury Foreperson [See Exhibit "A" hereto] charging Akers with: "COUNT 1: ASSAULT FIRST DEGREE KRS 508.010; UOR 13013 CLASS B FELONY"; and COUNT 2: STALKING FIRST DEGREE KRS 508.140; UOR 13242 CLASS D FELONY"; the same was "Filed and Entered" by the Fayette Circuit Court Clerk; bail was set for $7,500 full cash [CP#1, R. Overstreet, 11/10/95, 13:09:28, et seq.]; and the case was set for arraignment on November 10, 1995, before Fayette Circuit Judge Rebecca M. Overstreet...

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[82] **TITLE 42 U.S.C. § 1985** (continued from page 104 hereof): "... **persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce,** the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy,** whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added). **See also**: Hereinabove paragraphs E-51, E-52, E-54 thru E-58, E-60 through E-68, & E-72 through E-80 and corresponding footnotes [63], [65], [66], [67], [68], [69], [70], [71], [72], [73], & [74] thereto and footnote [7] [supra, page 13 hereof], i.e., "**Fraud**" defined: "A **false representation of a matter of fact,** whether by words or by conduct, **by false or misleading allegations, or by concealment of that which should have been disclosed,** which deceives and is intended to deceive another so that he shall act upon it to his legal injury; ...A generic term, embracing all multifarious means which human ingenuity can devise, ...to get advantage over another by false suggestions or **by suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional.** It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another.** And includes **anything calculated to deceive,** whether it be a single act **or combination of circumstances,** whether the **suppression of truth or the suggestion of what is false,** whether it be direct falsehood or by

innuendo, by speech or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

(hereinafter "Overstreet"), **who was and remains a long-standing and powerful member of the same church ("SCC") where Bishop is a high-profile member of the church choir**. It is, as well, worthy of note that Overstreet previously boasted (to great applause) to a Lexington area league of women voters to the effect that: "**Before I retire, I will have sentenced men to over one million years in the State Penitentiary**".[83]

83. On November 10, 1995, Akers appeared at the Fayette (Kentucky) Circuit Court for arraignment on the indicted charges and Overstreet **capriciously increased Akers' bail to a $52,000 Property Bond** [see Exhibit "QQ" hereto and CP#1, C. Perkins/R. Overstreet, 11/10/95, 13:13:50, et seq.];[84] Akers entered a plea of "not guilty"; posted the additional bail; and then promptly returned to Nashville, Tennessee, pending further hearings.

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[83] See also: Lexington Herald/Leader newspaper articles [Collective Exhibit "RR" hereto] and Bishop's "Letter to the Editor" [Exhibit "SS" hereto] on behalf of Overstreet's re-election in November of 1999.

[84] See: **U.S. Const. Amend. 5** [supra, page 7 hereof], i.e., "No person shall ...**be deprived of**...**liberty**, or property, **without due process of law**" (emph. added); **U.S. Const. Amend 8** [id., page 10 hereof], i.e., "**Excessive bail** shall not be required..." (emphasis added); **U.S. Const. Amend. 14** [id.], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emphasis added); **Ky Const § 2. Absolute and arbitrary power denied** [supra, page 26 hereof], i.e., "**Absolute and arbitrary power over the lives, liberty and property of freemen exists nowehere in a republic, not even in the largest majority**" (emph. added); **Ky Const § 17. Excessive bail or fine, or cruel punishment, prohibited** [id., page 27 hereof], i.e., "**Excessive bail shall not be required**..." (emphasis added); **Kentucky Criminal Practice § 11.09 Modification or revocation of bail**, i.e., "In

Marcum v Broughton, the Court held that after bond..." (continued, page 104 hereof)

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84. On January 3, 1996, Red Corn filed her "Notice of Evidence Pursuant to KRE 404 (b)" which listed alleged specific incidents **and even broad categories of alleged misconduct of/by Akers spanning the entire twenty-six year marriage of Akers and Bishop** [Exhibit "TT" hereto]. Therein items 2.a.(1), (2), (3), (6), (7), (8), and (9) were **completely and unequivocally false; were disputed by even Bishop's own sons**, Wayne and Alan; were **unsupported by any corroborative or supportive evidence**; and, even had they been true, would have been **completely irrelevant to Akers' indicted charges of "First Degree Assault" and "First Degree Stalking"**. Items 2.a.(4),(5), and 3., while containing "elements" of truth, amounted to **gross exaggerations and were, likewise, irrelevent and/or prejudicial if not fraudulent for the purposes intended and used by Bishop and Red Corn.**

85. From January 3, 1996, until and including Akers' first trial on May 20 through 22, 1996, Overstreet "**OVERRULED**" **every single motion filed by Akers' attorneys,** and essentially **ignored** properly raised issues with respect to evidence as to alleged "prior/other bad acts" falling within the limitations of K.R.E. 404(b) [see Exhibit "UU" hereto and hereinafter paragraph 96]

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[84] **Kentucky Criminal Practice § 11.09** (continued from page 103 hereof): "...has been set by the court, the bond may not be increased or revoked without a change in the defendant's status. The Court stated that **increasing the bond without any reason would be an arbitrary action in violation of § 2 of the Constitution of Kentucky**" (emph. added); and **Ky Const § 26** [supra, page 28 hereof], i.e., "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**" (emphasis added).

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86. On May 20, 1996, Akers' trial was commenced in the hereinabove Court. **Some of the "irregularities"** of that trial include, **but are not limited to**, the following:

I. Pre-trial Matters: (a) Pursuant to the Akers' son, Wayne, having expressed his dismay of Bishop's hereinabove acts and/or schemes, Red Corn attempted to influence and/or obstruct the anticipated testimony of A. Wayne Akers by telephoning him during the week of May 10, 1994, and making a statement to the effect that: **"[h]ow dare you talk to your mother like that!"**[85]

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[85] See: **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant** [supra, page 14 hereof], i.e., "(b) Whoever knowingly uses **intimidation...or corruptly persuades** another person, **or attempts to do so**, or engages in misleading conduct toward another person, **with intent** to-- (1) **influence**, delay, **or prevent the testimony of any person** in an official proceeding; (2) **cause or induce any person to**-- (A) withhold testimony...from an official proceeding; ...shall be fined under this title or imprisoned not more than ten years, or both" (emphasis added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: [id.], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added).

II. Jury Selection Phase: (a) Five jurors came forward and admitted that they, or someone closely associated with them, had been the "victim" of "domestic violence or abuse" and the court refused to excuse those jurors. (b) Red Corn "pre-prejudiced" the jurors by, ***inter alia***, (i) erroneously and intentionally misleading them as to the essential elements of "Assault in the First Degree" [TT#1, L. Red Corn, 05/20/96, 09:57:10 & 09:59:45]; and (ii) erroneously instructed the jurors with respect to the essential elements of "Stalking in the First Degree" [TT#1, L. Red Corn, 05/20/96, 11:00:30].

III. Jury Voir Dire Phase: (a) Sanctioned by Overstreet, Red Corn "tampered with the jur[ors]"[86] by instructing them to the effect that: "If any of you believe that the courts should not get involved in marital relationships, then please excuse yourselves now." [TT#1, L. Red Corn, 05/20/96, 11:01:00]

IV. OPENING ARGUMENTS: (a) Red Corn intentionally misled and/or and/or "tampered with [and/or confused] the jury"[86] with respect to the charges for which Akers was on trial, i.e., "First Degree Assault" (for discrete acts on, or about May 4, 1994), and "First Degree Stalking" (for an alleged course of conduct from...

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[86] **See**: **"Tampering with jury"**: "...The act of attempting to influence a juror corruptly by...persuasions, entreaties, ...or **any other means except the production of evidence in open court**. *See e.g.* 18 U.S.C.A § 1503, 1504." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988 (emphasis added)]. **See also**: **"Tamper"** (footnote 9 hereof): "To meddle so as to alter a thing, especially to make illegal, **corrupting or perverting changes**" [id.].

November of 1994 until August of 1995), by propounding alleged acts spanning the entire twenty-six year marriage of

Akers and Bishop and, even if those allegations had been true, such would have had no relevance whatsoever to Akers' indicted charges.

V. PROSECUTION'S CASE-IN-CHIEF: (a) Red Corn (with assistance and sanction of Overstreet) successfully deployed numerous "evidentiary harpoons" of erroneous, derogatory, irrelevant and inadmissible testimony not included in her "Notice pursuant to K.R.E. 404(b)" [Exhibit "TT" hereto] including, **but not limited to** insinuations that Akers burned down a home he was building in 1988[87] [TT#1, 05/20/96, C. Patrick, 17:36:35 et seq. & 19:07:40]; (b) Red Corn introduced into evidence, and played for the jury, audio-taped testimony of Akers at that hearing/trial in herein-

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[87] See: Paragraph 18, Page 5, Exhibit "B" hereto; Paragraph 5, Page 2, Exhibit "D" hereto; Paragraph 7, Page 2, Exhibit "E" hereto; **K.R.E. 103. RULINGS ON EVIDENCE** [supra, page 38 hereof], i.e., "**(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.**" (emphasis added); **K.R.E. 107. MISCELLANEOUS PROVISIONS** [id., page 39 hereof] "**(b) Effective date**: The Kentucky Rules of Evidence shall take effect on the first day of July, 1992. **They shall apply to all** civil and **criminal actions and proceedings** originally brought on for trial after that date and to pretrial motions or matters originally presented to the court for decision upon or after that date if a determination of such motions or matters requires application of evidence principles; provided, however, that **no evidence shall be admitted against a criminal defendant in proof of a crime committed prior to July 1, 1992**, unless that evidence would have been admissible under evidence principle in existence prior to adoption of these rules." (emphasis added); **K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES**: [id., page 40 hereof], i.e., "**(a) Character Evidence Generally**: Evidence of a persons character is **not admissible** for the purpose of proving action in conformity therewith on a particular occasion, except: (1) *Character of accused*: Evidence of a pertinent trait of character or of the..." (continued, page 111 hereof)

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above paragraph E-38 and which was clearly inadmissible pursuant to **K.R.S. 403.780** [supra, page 31 hereof], i.e.,

"Testimony not admissible in criminal proceeding: Testimony offered by an adverse party in a hearing held pursuant to the provisions of [KRS] 403.745 **shall not be admissible in any criminal proceeding involving the same parties**" (emphasis added) [see TT#1, L. Red Corn, 05/20/00, 11:41:57]. (c) Bishop, under the encouragement, guidance, and sanction of Red Corn and Overstreet, respectively, fraudulently[88] testified with respect to matters including, **but not limited to**: (i) facts with respect to hereinabove paragraph E-31, to the effect that Akers had "pulled [her] out of the bed by the hair of [her] head and drug [her] out in the hallway",

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[87] **K.R.E. 404** (continued from page 110 hereof): "... general moral character **offered by the accused**...; (2) *Character of Victim Generally*: Evidence of a pertinent trait of character of the victim of the crime **offered by the accused**...; **(b) Other Crimes, Wrongs, or Acts**. Evidence of other crimes, wrongs, or acts **is not admissible** to prove the character of a person in order to show action in conformity therewith. ...**(c) Notice Requirement**. In a criminal case, if the prosecution intends to introduce evidence pursuant to subdivision (b) of this rule as a part of its case in chief, it **shall give reasonable pretrial notice to the defendant** of its **intention** to offer such evidence. **Upon failure of the prosecution to give such notice the court may** exclude the evidence offered under subdivision (b) or for cause shown may excuse the failure to give such notice and **grant the defendant a continuance or such other remedy as necessary to avoid unfair prejudice caused by such failure**." (emphasis added)

[88] **See**: "**'Fraud' defined**" [footnote [7], page 13 hereof], i.e., "A generic term, embracing all multifarious means which human ingenuity can devise, ...**to get advantage over another by false suggestions** or by suppression of the truth...; It comprises **all acts, omissions, and concealments involving a breach of a legal or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the suppression of truth or the **suggestion of what is false, whether it be direct falsehood or by innuendo**, by speech or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]. **See also**: "**Tampering with jury**" [footnote [8], id.]: "The act of..." (continued, page 112 hereof)

and "struck her "repeatedly in the face with his fist"; (ii) allegations that Akers had continued to contact her and threaten her during the summer of 1994 **after the effective date of the "Domestic Violence Order" in hereinabove paragraph E-38** [TT#1, C. Patrick, 05/20/96, 16:28:30 et seq.]; (iii) denied that she had ever experienced problems with her neck and/or back prior to May 4, 1994 [TT#1, 05/20/96, C. Patrick, 16:36:00, et seq.]; (iv) introduced into evidence and **showed to the a jury retouched**...

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[88] "**Tampering with jury**" (continued from page 111 hereof): "...attempting to influence a juror corruptly by...persuasions, entreaties, ...or **any other means** except the production of evidence in open court. *See e.g.* 18 U.S.C.A § 1503, 1504." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]; **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: [supra, page 16 hereof], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire to ...influence the verdict**, presentment, or indictment **of any** grand or **petit jury**..., **or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of **any person**...to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added); **K.R.S. 523.020 Perjury in the first degree** [supra, page 38 hereof], i.e., "(1) A person is guilty of perjury in the first degree when he makes a material false statement, which he does not believe, in any official proceeding under oath required or authorized by law; (3) Perjury in the first degree is a Class D felony." (emphasis added); and/or **K.R.S. 523.050. Inconsistent statements** [id.], i.e., "(1) When a person has made **inconsistent statements under oath**, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single charge alleging in the alternative that **one or the other was not believed** by the defendant. In such case **it shall not be necessary** for the prosecution **to prove which statement was false but only that one or the other was false** and not believed by the defendant to be true." (emphasis added).

photograph fraudulently depicting an injury to Bishop from an incident which occurred on August 10, 1989 [TT#1, 05/20/96, C. Patrick, 17:32:15 et seq.]; and (v) introduced into evidence and **showed the jury a photograph of Bishop (taken in 1969 and damaged thereafter by someone other that Akers)** which Bishop alleged was the basis of her fear of Akers' during the time of the alleged "stalking" [see TT#1, 05/20/96, C. Patrick, 16:56:15 et seq.][89]; (d) Fleming, under the encouragement, guidance, and/or sanction of Bishop, Red Corn, and Overstreet, respectively, fraudulently[88] testified with respect to matters including, **but not limited to**: (i) the demeanor and/or physical condition of Bishop on the morning of May 5, 1994; (ii) Bishop's "fainting" soon thereafter as the result of the events of May 4/5, 1994 (see hereinabove paragraph E-15(c)); and (iii) that there was a "big hole in the wall" at the Akers' home as the purported result of Akers' "throwing [Bishop] through [same]" on May 4/

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[89] See: **TITLE 18 U.S.C. § 2. Principals** [supra, page 11 hereof], i.e., "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels,** commands, **induces, or procures** its commission, **is punishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emph. added); **TITLE 18 U.S.C. § 3. Accessory after the fact** [id.], i.e., "Whoever, knowing that an offense against the United States has been committed, **receives, relieves,** comforts **or assists** the offender in order to hinder or prevent his apprehension, trial or punishment, **is an accessory after the fact**." (emphasis added); **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally** [id., page 13 hereof], i.e., "(a) Whoever **corruptly...endeavors to influence or impede any grand or petit juror,** or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice,** shall be punished as provided in subsection (b)." (emphasis added); **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant**: [id., page 14 hereof], i.e., "(b) Whoever knowingly uses **intimidation...or corruptly pursuades** another person, ..." (continued, page 114 hereof)

5, 1994.[89] (e) Rushing, under the encouragement, guidance, and/or sanction of Bishop, Red Corn, and Overstreet, respectively, fraudulently[88] testified with respect to matters

including, **but not limited to**: (i) testimony that he had never seen Akers prior to July, 1994; (ii) that Rushing had received in excess of "fifty [tele]phone calls from Akers during the months of May, June, July, and August of 1994 [see TT#1, A. Rushing, 05/20/96, 14:36:30]; and (iii) that Rushing had never discussed with Bishop that she might be "fired unless she [got] her personal life in order".[89]

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[89] **TITLE 18 U.S.C. § 1503** (continued from page 113 hereof): "... **or attempts to do so**, or engages in misleading conduct toward another person, **with intent** to-- (1) **influence**, delay, **or prevent the testimony of any person** in an official proceeding; (2) **cause or induce any person to**-- (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's integrity** or availability in an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both." (emphasis added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); and **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: [id.], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added).

VI. DEFENSE PHASE: (a) Overstreet & Red Corn conspired to, and **effectively barred** the testimony of eyewitness, Alan P.

Akers, with respect to evidence **clearly admissible under K.R.E. 803** [see TT#2, A. Akers, 05/21/96, 11:36:55 et seq.] despite having already allowed similar and **far less admissible testimony** of certain preceding prosecution witnesses. (b) Red Corn, under the misinformation of Bishop, and sanction and encouragement of Overstreet, intentionally confused the jury with respect to the charges for which Akers was on trial and, thereby, "tampered with the jury" by making competely fraudulent insinuations that: (i) **at some point in his life**, Akers had threatened his father with a knife; (ii) thrown a flashlight **at someone**; and (iii) **in some manner**, **had something** to do with the breaking of Akers' mother's arm [TT#2, W. E. Akers/L. Red Corn, 05/21/96, 14:27:40, et seq.].[90] (c) Overstreet and Red Corn would not allow the testimony of Akers' fiance', Deborah L. Harvil, with respect to Akers' emotional state during period of time period of alleged "stalking".[91] [TT#3, D. Harvil, 05/21/96, 15:47:45]

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[90] See: "Fraud" defined: "A **false representation of a matter of fact**, whether by words or by conduct, **by false or misleading allegations**...""A generic term, embracing all multifarious means which human ingenuity can devise, ...to get advantage over another **by false suggestions** or by suppression of the truth...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable**..." (continued, page 116 hereof)

[91] **K.R.E. 401. DEFINITION OF "RELEVANT EVIDENCE"**: [supra, page 40 hereof], i.e., "**Relevant evidence**" means evidence having **any tendency** to make the existence of **any fact that is of consequence to the determination of the action more probable or less probable** than it would be without the evidence." (emph. added); **K.R.E. 402** [id.], i.e., "**All relevant evidence is admissible**, except as otherwise provided by..." (continued, page 117 hereof)

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[90] "Fraud" defined (continued from page 115 hereof): "...**duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the suppression of truth **or the suggestion of what is false**, whether it be **direct falsehood or by inuendo**, by speach or by silence, **by word of mouth, or by look or gesture**.

[Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]. **See also**: **TITLE 18 U.S.C. § 1503** [supra, page 13 hereof], i.e., "**Influencing or injuring officer or juror generally**: (a) Whoever **corruptly endeavors to influence or impede any grand or petit juror**, or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emphasis added); **TITLE 18 U.S.C. § 1961** [id., page 14 hereof], i.e., "**Definitions**: (1) "racketeering activity" means (B) any act which is indict-able under any of the following provisions of title 18, United States Code: ...**section 1503** (relating to obstruction of justice); et seq." (emph. added); **TITLE 42 U.S.C. § 1985** [id., page 16 hereof], i.e., "**Conspiracy to interfere with civil rights**: (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen ...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, mr class of persons, to the equal protection of the laws; (3)...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added); **K.R.E. 103. RULINGS ON EVIDENCE** [supra, page 39 hereof], i.e., "(c) **Hearing of Jury**. **In jury cases, proceedings shall be conducted**, to the extent practicable, **so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements** or offers of proof or asking questions **in the hearing of the jury**." (emph. added); **K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES**: "**(a) Character Evidence Generally** [id., page 40 hereof], i.e., **Evidence of a persons character is not admissible** for the purpose of proving action in conformity therewith on a particular occasion, **except**: (1) *Character of accused*: Evidence of a pertinent trait of character or of the general moral character **offered by the accused**...; **(b) Other Crimes, Wrongs, or Acts**. Evidence of other crimes, wrongs, or acts **is not admissible** to prove the character of a person in order to show action in conformity therewith. ...**(c) Notice Requirement**. In a criminal case, if the prosecution intends to introduce evidence pursuant to subdi-vision (b) of this rule as a part of its case in chief, it **shall give reasonable pretrial notice to the defendant** of its **intention** to offer such evidence. **Upon failure of the prosecution to give such notice the court may** exclude the evidence offered under subdivision (b) or for cause shown may excuse the failure to give such notice and **grant the defendant a continuance or such other remedy as necessary to avoid**..." (continued, page 118 hereof)

[91] (continued from page 115 hereof): "...the Constitution of the United States and the Commonwealth of Kentucky, by the acts of the General Assembly of the Commonwealth of Kentucky, by these rules, or by other rules adopted by the Supreme Court of Kentucky." (emphasis added); **K.R.E. 405. METHODS OF PROVING CHARACTER** [id.], i.e., "**(a) Reputation or opinion.** In all cases in which evidence or a trait of character of a person is admissible, proof **may be made** by testimony as to general reputation in the community or by testimony **in the form of opinion**. **(c) Specific Instances of Conduct**. In cases in which character of a personis an [asserted] element of a charge, claim, or defense, **proof may also be made of specific incidents in that person's conduct**." (emph. added). **See also**: Hereinabove footnote [89] i.e., **"Fraud" defined**: "A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations..." "A generic term, embracing all multifarious means which human ingenuity can devise, ...to get advantage over another by false suggestions or by **suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances, whether the suppression of truth** or the suggestion of what is false, whether it be direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture. [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]; **TITLE 18 U.S.C. § 1503** [supra, page 13 hereof], i.e., "**Influencing or injuring officer or juror generally**: (a) Whoever **corruptly...endeavors to influence or impede any grand or petit juror**, or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emphasis added);

TITLE 18 U.S.C. § 1961 [id., page 14 hereof], i.e., "**Definitions**: (1) "racketeering activity" means (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...**section 1503** (relating to obstruction of justice); et seq." (emphasis added); **TITLE 42 U.S.C. § 1985** [id., page 16 hereof], i.e., "**Conspiracy to interfere with civil rights**: (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added); **K.R.E. 1101. APPLICABILITY OF RULES** [id.], i.e., "**(a) Courts**. These rules apply to

all the courts of this Commonwealth in the actions, cases, and proceedings and to the extent hereinafter set forth. ...**(c) Rules on Privileges**. The rules with respect to **privileges apply at <u>all</u>**..." (continued, page 118 hereof)

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<u>VII. CLOSING ARGUMENTS</u>: (a) In her "closing arguments", Red Corn further inflamed the jury by **<u>emotionally asserting</u>** that: "**[Akers] could have driven up that interstate and killed someone!**"[91]

<u>VIII. INSTRUCTIONS TO JURY</u>: (a) Overstreet knowingly, and intentionally, "tampered with the jury" by providing them with erroneous and misleading "definitions" with respect to, ***inter alia***, "dangerous instrument", "wantonly", & "recklessly" [TT#3,

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[90] **K.R.E. 404** (continued from page 116 hereof): "...**unfair prejudice caused by such failure**." (emph. added); **K.R.E. 602. LACK OF PERSONAL KNOWLEGE** [id., page 41 hereof], i.e., "A witness may not testify to a matter unless evidence is introduced to support a finding that the witness has **personal knowlege** of the matter." (emphasis added); **K.R.E. 1101. APPLICABILITY OF RULES** [id.], i.e., "**(a) Courts**. These rules apply to **all the courts of this Commonwealth in the actions, cases, and proceedings** and to the extent hereinafter set forth. ...**(c) Rules on Privileges**. The rules with respect to **privileges apply at <u>all stages</u> of all actions, cases, and proceedings**." (emphasis added); **<u>in conjunction with</u> <u>U.S. Const. Amend. 5</u>** [supra, page 7 hereof], i.e, "No person shall...**be deprived of**...**liberty**, or property, **without due process of law.**" (emphasis added); **<u>and</u> <u>U.S. Const. Amend. 14</u>** [id., page 10 hereof], i.e., "**No State** shall...deprive **<u>any person</u> of life, liberty, or property, without <u>due process of law</u>** (emphasis added)

[91] (continued from page 118 hereof): "...**<u>stages</u> of all actions, cases, and proceedings**." (emphasis added); **<u>in conjunction with</u> <u>U.S. Const. Amend. 5</u>** [supra, page 7 hereof], i.e, "No person shall...**be deprived of**...**liberty**, or property, **without due process of law.**" (emphasis added); **<u>and</u> <u>U.S. Const. Amend. 14</u>** [id., page 10 hereof], i.e., "**No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall <u>any state</u> deprive any person of life, liberty, or property, without <u>due process of law</u>**; nor deny any **person within its jurisdiction <u>equal protection of the laws</u>**." (emphasis added)

[92] There can be no question that America's "criminal law" was intended to be

"punitive" or, in some cases, "injunctive" but that it was **never intended** to be "speculative" or "inflammatory". Moreover, there are **in excess of four million persons in the State of Tennessee** and, in view of those facts within hereinabove paragraphs E-31 through E-34, E-36 through E-47, E-50, & E-56 through E-63, **all such persons would have been more likely** to "have driven up that interstate and killed someone" than Akers was inclined to.

R. Overstreet, 05/21/96, 09:12:45, et seq.; **See also**, TT#3, L. Red Corn, 05/22/96, 10:06:30, et seq.]; and (b) Red Corn and Overstreet refused to allow a jury instruction with respect to "E.E.D." (Extreme Emotional Disturbance) as a mitigating factor for Akers' alleged "Assault" or "Stalking" of Bishop.[93]

IX. JURY DELIBERATION PHASE: (a) On the final day of Akers' trial, and just prior to going into deliberations, a juror was seen with that day's issue of the Lexington Herald/Leader, which contained a "front page" report **graphically depicting** events of the previous day, wherein a Lexington woman was murdered by her boy-friend following a "domestic fight". [Exhibit "VV" hereto; **see also**: Item 4, Exhibit "F" hereto; and TT#3, L. Red Corn, 05/22/96, 10:16:00, et seq.]

87. On May 22, 1996, Akers was convicted in the Fayette Circuit Court on one (1) count each of "First Degree Assault" and "First Degree Stalking", as indicted, and the jury then recommended sentences of ten (10) years and five (5) years, respectively, to be served consecutively, for a total sentence of fifteen (15) years imprisonment [see Exhibit "WW" hereto].

88. Upon Akers' convictions resulting from hereinabove paragraphs E-31, E-32, E-35, E-36, E-38, E-40 thru E-42, E-48, ...

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[93] See: "**Due process of law**" defined [footnote [5], page 8 hereof], i.e., "...**The concept of 'due process of law' as it is embodied in the Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious**..." U.S. v. Smith, D.C. Iowa, 249 F.Supp. 515, 516.; and "...**the verdict must be supported by the evidence presented.**" [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]

E-51, E-54, E-56 thru E-68, E-70 thru E-79, & E- 81 thru E-87, Red Corn commented to Akers' defense attorney and previous civil attorneys about Akers to the effect that: "**That son of a bitch! I'd have gotten him life if I could have!**"

89. On June 21, 1996, Akers appeared before Overstreet for "Final Sentencing"; Akers' timely-filed "Motion for New Trial and Motion for Judgement Notwithstanding the Verdict" [see Exhibit "XX" hereto], "Motion for Shock Probation", and "Motion to Reinstate the Pre-trial Bond" of Akers were "**OVERRULED**"; and despite numerous mitigating letters having been filed with the Court [see collective Exhibit "YY" hereto and Overstreet's acklnowledgement thereof (CP#1, 06/21/96, R. Overstreet, 06/21/96, 14:52:02, et seq.)], Overstreet made the following statement: "**...I know that by putting you in the penetintiary, I can protect your ex-wife, your current girlfriend[94] or any other female that in the future you may come in contact with.**"

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[94] It is clear that Overstreet does not understand, **or refuses to accept**, the limits of her jurisdiction. **Not only has she usurped Akers' rights under the constitutions of the United States of America and the State of Tennessee [or the jurisdiction of the State of Tennessee** with respect to acts committed **within the State of Tennessee** and were, **at worst**, a misdemeanor under Tennessee law (see T.C.A. 39-117-308, supra, page 21 hereof)], she now is attempting to confer jurisdiction over all the constitutional rights of **Harvil**, a **citizen** and resident **of the United States of America and the State of Tennessee** therein, **and would not even be within the state of Kentucky** but for exercising of her rights as **secured by the United States Constitution**. Overstreet further asserted that: "...due to [Akers'] emotional and mental condition, ...**alcoholism, [and]...the violent...and deliberate nature of [Akers'] crime**..., [that] the Court is of the opinion that imprisonment is necessary for the protection of the public because there is a substantial risk that [Akers] will commit another crime during any period of conditional discharge..." [Exhibit "ZZ", page 2, lines 4 through 14]. **See also** (in reality): Exhibits "B" through "K", "T", "V", [collective Exhibit] "YY", & "TTT" hereto.

Overstreet then imposed her "Final Judgement [&] Sentence of Imprisonment" "at hard labor."[95] [see Exhibit "ZZ" hereto, and which was actually signed by (Chief Fayette) Circuit Judge Mary C. Noble on June 27, 1996, in Overstreet's absence]

90. On November 5, 1996, Akers' attorney on appeal, David A. Tapp (hereinafter "Tapp"), filed his "Motion for Bail on Appeal", citing substantial grounds warranting Akers' release on bail during the pendancy of appeal including, but not limited to: (a) Overstreet's improper admission of highly-prejudicial, irrelevant, and inadmissible evidence as to alleged/uncharged "prior/other bad acts" in violation of K.R.E. 404(b) & (c) as further set out in **Bell v. Commonwealth, Ky., 875 S.W.2d 882, 890, (1994)**; (b) Overstreet's refusal to admonish the jury with respect thereto as required by K.R.E. 105 [supra, page 39 hereof]; (c) Akers compliance with all pre-trial conditions of release [Exhibit "AAA" hereto]; and (d) That said "Motion"

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[95] See **ARTICLE IV-SECTION 2** [supra, page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emph. added); **U.S. Const. Amend. 8** [id., page 10 hereof], i.e., "Excessive bail shall not be required, ...**nor...unusual punishments inflicted**" (emph. added); **U.S. Const. Amend. 13** [id.], i.e., "Neither slavery nor **involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted**, shall exist within the United States or **any place** subject to their jurisdiction" (emph. added); **U.S. Const. Amend. 14** [id., page 10 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emphasis added); and, ***inter alia***, herein paragraphs E-82 through E-86, E-90, E-94 through E-99, E-104, E-107 through E-114, & E-121 through E-123.

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was "**OVERRULED**" by Overstreet on, or about, November 21, 1996, stating, ***inter alia***, that: (e) "[Akers] would be **a threat to society, regardless of his behavior prior to the conviction.**" [see Exhibit "BBB" hereto][96] (emphasis added)

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[96] Again, see (in reality): Herein Exhibits "B" through "K", "T", "V", [collective Exhibit] "YY", & "TTT" hereto for contrasting view . See also: **Ky Const § 2. Absolute and arbitrary power denied** [supra, page 26 hereof], i.e., "**Absolute and arbitrary power over** the lives, liberty and property of **freemen exists nowehere in a republic, not even in the largest majority**" (emphasis added); "**Ky Const § 16** [page 27 hereof], i.e., "**Right to bail; habeas corpus**: "**All prisoners shall be bailable** by sufficient securities, unless for capital offenses when the proof is evident or the presumption is great" (emphasis added); **Ky Const § 26** [supra, page 28 hereof], i.e., "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**" (emphasis added).

ARTICLE IV-SECTION 2, U. S. Constitution [supra, page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. ...**nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws.**" (emph. added); **Commonwealth v. Hardin, S.W.2d 498 (1958)**, i.e., "What is the purpose of an appeal in any criminal case? It is to avoid the consequences of conviction. So it is with this appeal. It differs from other appeals, only as to grounds presented for reversal and the manner of presentation, not in purpose. **It is therefore the opinion of this Court that the defendant was entitled to bond pending appeal and the law is so certified**." (emphasis added); Hereinabove paragraphs E-12, E-82 (w/corresponding footnote [82]), E-83, E-85, E-86.II, III, V(a), (c) thru (e), VI, & VIII, E-89; Hereinafter paragraphs E-92 thru E-94, E-96, E-97, E-99 thru E-104, E-106 thru E-108, E-110 thru E-113, & E-121 thru E-123; **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [supra, page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emph. added); and **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id.], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..." (continued, page 123 hereof)

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91. On March 5, 1997, Assistant Attorney General for the Commonwealth of Kentucky, Cindy G. Swartz (hereinafter "Swartz") performed her "chain-like" function[97] in furtherance of those conspiracies as outlined in hereinabove paragraphs A-2, A-3(f), E-12 thru E-14, E-16, E-24, E-35, E-36, E-38, E-40 thru E-45, E-47 thru E-49, E-50(a), (d), (e), & (f), E-56(a), (b), & (e), E-61, E-64 thru E-67, E-72 thru E-77, E-81 thru E-90, together with all corresponding footnotes thereto, by filing and serving her "Brief for Appellant" [Exhibit "CCC" hereto], and attempting to mislead the Kentucky Court of Appeals in presenting **totally unfounded, unsupported, and/or outright fraudulent** "Counter-statements of Facts" including, **but not limited to**: (a) "After throwing [Bishop] into the wall, Appellant continued to hit her and kick her body" [id., page 1, lines 17 thru 19]; (b) "Four days after the assault, [Bishop] sought medical attention"; (c) "[Bishop's] internal medicine physician testified that prior to the assault, [Bishop] had never complained of neck pain" [id., ...

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[96] (continued from page 122 hereof): "...or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emph. added)

[97] See: **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [supra, page 16 hereof] and footnotes [10, 11, 12] thereto [id, page 17 hereof]

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page 2, lines 4 thru 7]; (d) "Appellant continually violated the [May 10, 1994, "Emergency Protection"] order by constantly making threatening phone calls to the bank. During one phone

call, Appellant told [Bishop] that he was going to go for the throat now" [id., lines 10 thru 12]; (e) "[Akers] called one of [Bishop's] fellow employees a 'bitch' and threatened to harm several others" [id., lines 15 thru 17]; (f) "Dr. Von (sic) stated that [Bishop's] symptoms were due to her trauma from the physical altercation with [Akers]" [id., page 3, lines 7 & 8]; (g) "Essentially, [Akers] stalked [Bishop] throughout most of their marriage." [id., page 7, line 21 thru page 8, line 1]; (g) Dr. Inbeck (sic) testified that based upon the information he received from [Bishop], he felt the pain she was having was due to the altercation with [Akers]." [id., page 14, item 7].[98]

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[98] See: **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally** [supra, page 13 hereof], i.e., "(a) Whoever **corruptly...endeavors to influence or impede any** grand or petit juror, or **officer in or of any court of the United States**, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emph. added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id.] (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire**...for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause**..." (continued, page 125 hereof)

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92. Having been denied "Bail on Appeal" by Overstreet [see hereinabove paragraph E-90]; (a) on May 29, 1997, Akers filed his "APPLICATION FOR BAIL PENDING APPEAL" [Exhibit "DDD" hereto] with the Kentucky Court of Appeals

pursuant to RCr 12.82 citing substantial bases for the granting thereof.

93. (a) On June 9, 1997, Swartz continued to perform her "chain-like" function in furtherance of those conspiracies as outlined in hereinabove paragraphs A-2, A-3(f), E-12 thru E-14, E-16, E-24, E-35, E-36, E-38, E-40 thru E-45, E-47 thru E-49, E-50(a), (d), (e), & (f), E-56(a), (b), & (e), E-61, E-64 thru E-67, E-72 thru E-77, E-81 thru E-91, and all the corresponding footnotes thereto, by filing her frivilous and/or fraudulent "RESPONSE..." [Exhibit "EEE" hereto] to Akers' "APPLICATION FOR BAIL PENDING APPEAL" [Exhibit "DDD" hereto] resulting in; (b) the further denial of Akers' liberty by the Kentucky Court of Appeals. [see "ORDER" of August 14, 1997, Exhibit "FFF" hereto]

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[98] **TITLE 42 U.S.C. § 1985** (continued from page 124 hereof): "...**to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added); and "**Fraud**" defined: "...A generic term, embracing all multifarious means which human ingenuity can devise, ...**to get advantage over another by false suggestions** or **by suppression of the truth** ...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false**, whether it be direct falsehood or by innuendo, by speech or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

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94. While imprisoned pursuant to his convictions resulting from hereinabove paragraphs E-31, E-32, E-35, E-36, E-38, E-40 thru E-42, E-48, E-51, E-54, E-56 thru E-68, E-70 thru E-79, & E- 81 thru E-87, and for the purpose of preparing further "post-conviction relief" in addition to his appeal, (a) on June 10, 1997, Akers filed a motion with Overstreet for provision (**at Akers' expense**) of certain documentation on file with Fayette

Circuit Court [see Exhibit "GGG" hereto]; and (b) Overstreet "**OVERRULED**" that said motion on June 27, 1997, on the purported grounds that Akers was otherwise represented by counsel [see Exhibit "HHH" hereto]; (c) Akers then filed his "MOTION FOR RECONSIDERATION...AND FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW..." [Exhibit "III" hereto] advising Overstreet that counsel had only been retained by Akers for the **sole purpose of appeal** and was **not authorized** by Akers to proceed in any other manner; and subsequent "MOTION TO RULE..." [Exhibit "JJJ" hereto]; and (d) that motion was also "**OVERRULED**" by Overstreet on August 20, 1997.[99] [see Exhibit "KKK" hereto]

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[99] See: **ARTICLE IV-SECTION 2**, U. S. Constitution [supra, page 6 hereof],i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **ARTICLE III-SECTION 2** [id.], i.e., "[1.] The judicial power shall extend to all cases, **in law or equity**, arising under this constitution, the laws of the United States...; ...between citizens of different states" (emphasis added); **ARTICLE IV-SECTION 2** [id.], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emph. added); **U.S. Const. Amend. 5** [id., page 7 hereof], i.e., "No person shall...**be deprived of**...**liberty**, or property, **without due process of law**" (emphasis added) and corresponding footnote [5], i.e., "Due process of law" defined: "Law in its regular course of administration through courts of justice. ...Due process of law implies the right of the person affected thereby to be present before the tribunal..." (continued, page 127 hereof]

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[99] "Due process of law" defined (continued from page 126 hereof): "...which pronounces judgement upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, **and to have the right of controverting ...every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law**. An orderly proceeding wherein a person is **served with notice**, actual or constructive, and **has an opportunity to be heard and to enforce and protect his rights** before a court having power to hear and determine the case. ...**The concept of 'due process of law' as it is embodied in the Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious**... U. S. v. Smith, D.C. Iowa, 249 F.Supp. 515, 516. Fundamental requisite of 'due process' is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice

whether to acquiesce or contest... Trinity Episcopal Corp. v. Romney, D.C.N.Y., 387 F.Supp. 1044, 1084. **Aside from all else, 'due process' means fundamental fairness and substantial justice**. Vaughn v. State, 3 Tenn. Crim. App. 54, 456 S.W.2d, 879, 883. Embodied in the due process concept are the basic rights of a defendant in criminal cases and the requisites for a fair trial. These rights and requirements have been expanded by Supreme Court decisions and include, timely notice of a hearing or trial which informs the accused of the charges against him or her; **the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge**; the presumption of innocence under which **guilt must be proven** by legally obtained evidence and **the verdict must be supported by the evidence presented**, and **the guarantee that an individual will not be tried more than once for the same offense (double jeopardy)**." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]; ; **U.S. Const. Amend. 14** [id., pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emphasis added) and corresponding footnote [99], i.e., "**Equal protection of the law**" defined: "**The constitutional guarantee of "equal protection of the law" means that no person or class of persons shall be denied the same protection of the laws... in their lives, liberty, property, or in their pursuit of happiness**. People v. Jacobs, 27 Cal.App.3d 246, 103 Cal.Rptr. 536, 543; 14th Amend., U.S. Const. ...**The equal protection of the laws of a state is extended to persons within its jurisdiction...with like rules of evidence and modes of procedure, for the security of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; ...when no different or greater punishment is enforced against them for a violation of the laws.**" See also: "**Equal protection clause**", i.e., "**That provision of the 14th Amendment to U.S. Constitution which prohibits a State from denying any person within its jurisdiction the equal protection of the laws. This clause requires that persons...be given equal protection** in the enjoyment of personal rights and the prevention **and redress of wrongs**." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]; **TITLE 18 U.S.C. § 5. United States defined:** The term "United States", ..." (continued, page 128 hereof]

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[99] **TITLE 18 U.S.C. § 5** (continued from page 127 hereof): "...as used in this title in a territorial sense, includes **all places** and waters, continental or insular, **subject to the jurisdiction of the United States**, except the Canal Zone." (emphasis added); **TITLE 28 U.S.C. § 1654**: [id., page 16 hereof], i.e., "In all courts of the United States, **the parties may plead and conduct their own cases personally** or by counsel as, by the rules of such courts, respectively, are

permitted to manage and conduct causes therein" (emphasis added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [id.], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added) and corresponding footnotes [10], [11], & [12] thereto, i.e., "**Conspiracy**" defined: "A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or **some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators**, or for the purpose of using criminal or unlawful means to the commission of an act in itself unlawful. A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he: (a) agrees with other such person that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime. Model Penal Code, § 5.03. **A conspiracy may be a continuing one; actors may drop out, and others drop in**; the details of operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose. **There are a number of federal statutes prohibiting specific types of conspiracy**." [Black's Law Dictionary, Abridged Sixth Edition, 8th Reprint-1988 (emph.added)]; "***[Chain] Conspiracy***" defined [id.], i.e., "Such a conspiracy is characterized by different..." (continued, page 129 hereof)

95. Having received no relief pursuant to those requests in hereinabove paragraph E-94; (a) on August 1, 1997, Akers filed his "Open Records Request" [see Exhibit "LLL" hereto] with the Fayette [Kentucky] Circuit Court Clerk in effort to obtain those records denied by Overstreet and, in performance of their "chain-like" function in furtherance of those conspiracies as outlined hereinabove, **that request was ignored** by officers and/or employees of the Office of Fayette [Kentucky] Circuit Court Clerk (known only as a group of persons at the Office of the Fayette [Kentucky] Circuit Court Clerk, hereinafter "FCC Does 1 through 10").[100]

96. Pursuant to Akers' appeal of those convictions in hereinabove paragraphs E-80 & E-81, the Court of Appeals of the Commonwealth of Kentucky rendered Its **first** "Opinion Vacating and Remanding" [see Exhibit "MMM" hereto] Akers convictions on February 27, 1998, on the explicit grounds that: (a) Akers was denied due process of law by improper joinder of offenses; (b) the trial court had improperly admitted evidence of alleged and...

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[99] "*[Chain] Conspiracy*" defined (cont'd from page 128 hereof): "...activities carried on with same subject of conspiracy in chain-like manner that **each conspirator in a chain-like manner performs a serparate function which serves in the accomplishment of the overall conspiracy**." [id.]; and "*[Civil] Conspiracy*" defined [id.], i.e., "The essence of a 'civil conspiracy' is a concert or combination to defraud or cause other injury to person or property, which results in damage to the person or property of plaintiff." **See also**: **"[Civil] Conspiracy"** further defined: "A combination of two or more persons who, by concerted action, seek to accomplish an unlawful purpose or to accomplish some purpose, not in itself unlawful, by unlawful means." [id.]

[100] Hereinabove paragraph E-94 and corresponding footnote [99] thereto are re-stated herein the same as if set forth in its entirety.

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uncharged prior/other bad acts; (c) the trial court refused to admonish the jury with respect thereto such alleged an uncharged prior/other bad acts; and (d) further ruling that:

"While this evidence was **somewhat relevant to aspects of the stalking charge**, we agree with Akers that its probative value did not outweigh its prejudicial effect. **Moreover, the evidence of Akers' prior acts of domestic violence was not even arguably relevant to the assault charge.**" [id., page 6, lines 4 thru 10 (emphasis added)];

"Considering the trial court's **failure to make a finding [as to] the probative value of the evidence and** the trial court's **refusal to admonish the jury as to the proper use of the evidence**, we must vacate and remand for a new trial." [id., lines 14 thru 18 (emphasis added)]; and

"...**the evidence supporting a finding of first degree assault was not overwhelming**. As discussed, we cannot dismiss the likely probability that the jury improperly considered Akers' character when determining the degree of the assault. **As a result, we are compelled to vacate the assault conviction as well.**" [id., page 11, lines 1 thru 6 (emphasis added)][101]

97. On March 5, 1998, Overstreet conveyed by and through Akers' attorney Marcel Bush Radomile (hereinafter "Radomile") a "**condition**" to the effect that: "She (Overstreet) won't recuse herself **unless you** (Akers) **hire her husband** as defense counsel for your (Akers) new trial".[102] (emphasis added)

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[101] **See also**: TT#1, M. Radomile/L. Red Corn/R. Overstreet, 10/26/98, 13:31:00, et seq., i.e., Akers' motions accordingly pursuant to retrial.

[102] **It is well-known among Central Kentucky's legal community that it is virtually impossible to receive fair treatment and, in fact, that a party to an action will be "victimized" in Overstreet's court unless that party is on the same "political side" as Overstreet.** It is, as well, **clearly understood that the only way to secure Overstreet's recusal** and, thereby, avoid her oppression and/or tyranny, is to secure the services of her husband (an attorney in Versailles, [Central] Kentucky) to **force her recusal as "conflict of interest".** Even worse, it has been a **long-standing practice of Overstreet to capitalize on this scenario for the**..." (continued, page 131 hereof)

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[102] (continued from page 130 hereof): "...**express extortionate purpose** of both building the practice of her husband and capitalizing upon the misfortune of **any adverse party within her "kangaroo court"**. **See also**: **United States Codes Annnotated** [supra, page 11 hereof, et seq.], i.e., **TITLE 18 U.S.C. § 2. Principals**: "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commision, **is punishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 3. Accessory after the fact:** "Whoever, knowing that an offense against the United States has been committed, **receives, relieves**, comforts **or assists** the offender in order to hinder or prevent his apprehension, trial or punishment, **is an accessory after the fact**." (emph. added); **TITLE 18 U.S.C. § 5. United States defined**: "The term 'United States', as used in this title in a territorial sense, includes **all places** and waters, continental or insular, **subject to the jurisdiction of the United States**, except the Canal Zone." (emphasis added); **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally**: "(a) Whoever **corruptly ...endeavors to influence or impede any grand or petit juror**, or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emphasis added); **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant**: "(b) Whoever knowingly uses **intimidation ...or corruptly pursuades** another person, **or attempts to do so**, or engages in misleading conduct toward another person, **with intent** to -- (1) **influence**, delay, **or prevent...testimony of any person** in an official proceeding; (2) **cause or induce any person to** -- (A) withhold testimony, or withhold a record, document, or other object from an official proceeding; (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's integrity** or availability in an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both." (emphasis added); **TITLE 18 U.S.C. § 1341** [supra, page 13 hereof], i.e., "Whoever, **having devised or intending to devise** any scheme or artifice to defraud, **or for obtaining money or property by means of false or fraudulent pretenses**, ...**or attempting so to do**, places in any post office or authorized depository for mail matter, **any matter or thing whatever**, to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be **sent or delivered by any private** or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, **or knowingly causes to be delivered** by such carrier according to the direction thereon, or at the place at which it is directed to be delivered to the person to whom it is addressed, **any such matter or thing**, shall be fined under this title or imprisoned not more than five years, or both." (emph.added); **TITLE 18 U.S.C. § 1961** [supra, page 14 hereof]: "(1) 'racketeering activity' means ...; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...section 1341 (relating to

mail fraud), section 1343 (relating to wire fraud), ...section 1503 (relating to obstruction of justice); ...section 1512 (relating to tampering with a witness, victim, or an informant); (2) 'State' means **any State** of the United States, **any territory** or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) 'person' includes any individual, or entity..." (continued, page 132 hereof)

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[102] **TITLE 18 U.S.C. § 1961** (continued from page 131 hereof): "...capable of holding a legal or beneficial interest in any property; (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and **any union or group of individuals associated in fact** although not a legal entity; (5) 'pattern of racketeering activity' **requires at least two acts** of racketeering activity, one of which occurred after the effective date of this chapter and at least one of which occurred within ten years after the commission of a prior act of 'racket-eering activity'" (emphasis added); **TITLE 18 U.S.C. § 1962** [supra, page 14 hereof], i.e., "(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, **to use or invest, directly or indirectly, any part of such income**, in acquisition of any interest in, **or the activities of which affect**, interstate commerce; (d) It shall be unlawful for any person **to conspire** to violate any of the provisions of subsection (a), (b), or (c) of this section" (emphasis added); **K.R.S. 514.080 Theft by extortion**: "(1) A person is guilty of theft by extortion when he intentionally obtains the property of another **by threatening to**: (b) **Accuse anyone of a criminal offense**; or (c) **To expose a secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute**...; (3) Theft by extortion is a Class A misdemeanor unless the value of the **property obtained is three hundred dollars or more**, in which case it is a **Class D felony**." (emphasis added). **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: "**Every person** who, **under color of any statute, ordinance, custom**, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress;" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen equal protection of the laws**, or to injure

him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, **or class of persons**, to the equal protection of the laws; (3) ...**in any case of conpiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added); hereinabove paragraphs A-1, A-2, A-3, A-4, A-5, E-1, E-2, E-12, E-44, E-82 and corresponding Exhibits "UU", "VV", "WW", & "XX" thereto, E-83, E-85 thru E-87, E-89, E-90, E-94, & E-96; and herein-after paragraphs E-99, E-104, E-105, E-107 thru E-114, E-121, & E-123 thru E-127.

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98. On April 2, 1998, Akers was released from the Kentucky Department of Corrections and transferred back to Fayette County Detention Center pending re-trial on both the indicted charges.

99. On April 5, 1998, Akers was again arraigned before Overstreet and, **despite Akers' "Motion for Bond Reduction"** in view of having "served out" over three (3) years imprisonment, **Overstreet increased Akers' pre-trial bail of "$52,000 Property Bond" to "$52,000 Full Cash", effectively doubling Akers' prior conditions for release** [see Exhibit "NNN" hereto and herein above paragraphs E-80, E-82, & E-83] and citing "new domestic violence laws" enacted in 1998 as her reasons therefor.[103]

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[103] See: **ARTICLE I-SECTION 10**: [supra, page 6 hereof], i.e., "[1.] "**No state shall...pass any** bill of attainer, ***ex post facto* law**..." (emphasis added); **ARTICLE IV-SECTION 2, U. S. Constitution** [id., page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emph. added); **U.S. Const. Amend. 8** [id., page 10 hereof], i.e., "**Excessive bail** shall not be required, nor...**unusual punishments** inflicted" (emphasis added); **U.S. Const. Amend. 14** [id., pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State shall make or enforce any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws.**"

(emphasis added); **ARTICLE 1, SECTION 15, Tennessee Constitution** [supra, page 20 hereof], i.e., "**Bailable offenses - Habeas corpus -** That **all prisoners shall be bailable by sufficient sureties**, unless for capital offences, when the proof is evident, or the presumption great. And **the writ of Habeas corpus shall not be suspended**, unless in case of rebellion or invasion, the General Assembly shall declare the public safety requires it." (emphasis added); **ARTICLE 1, SECTION 16, Tenn. Const.** [id., page 20 hereof], i.e., "**Restrictions on bail, fines and punishment -** "That **excessive bail shall not be required**, nor excessive fines imposed, **no cruel and unusual punishments inflicted**." (emphasis added); **Ky Const § 2** [supra, page 26 hereof], i.e., "**Absolute and arbitrary power denied: "Absolute and arbitrary power over** the lives, liberty and property of **freemen exists nowehere in a republic, not even in the largest majority**." (emphasis added); **Ky Const § 16. Right to bail; habeas corpus** [id., page 27 hereof], i.e., "**All prisoners shall be bailable**..." (continued, page 134 hereof)

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100. On April 15, 1998, (a) Harvil and Akers' family posted the ordered $52,000 Full Cash Bond; (b) Akers was then released from custody; and (c) **promptly returned to Nashville, Tennessee, with Harvil**.

101. On April 16, 1998, Akers' then counsel, David A. Tapp, (hereinafter "Tapp") filed a "Motion to Sever" Akers' charges for re-trial [Exhibit "OOO" hereto] and a "Motion in Limine" with respect to alleged "prior/other bad acts" [Exhibit "PPP" hereto], consistent with the Kentucky Court of Appeals' "Opinion Vacating and Remanding" noted in hereinabove paragraph E-95.

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[103] **Ky Const § 2** (continued from page 133 hereof): "... by sufficient securities, unless for capital offenses when the proof is evident or the presumption is great..." (emphasis added); **Ky Const § 17** [id.], i.e., "**Excessive bail or fine, or cruel punishment, prohibited: "Excessive bail shall not be required** ..." (emphasis added); **Ky Const § 19 (1)** [id., page 28 hereof], i.e., "**No ex post facto law, ...shall be enacted**" (emphasis added); **Ky Const § 26** [id.], i.e., "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**." (emph.added); **[Kentucky Rule of Criminal Procedure] RCr 4.54 Continuation of bail**: "(3) In the event of a reversal of a conviction by an appellate court granting the defendant a new trial, the defendant shall be entitled to the rights of pretrial release under Rule 4.04

as if on initial appearance. (4) The efficacy of a bail bond shall not be affected by the fact that the defendant is prosecuted for an offense different from but arising out of the same occurrence as the charge named in the bail bond." (emph. added); Kentucky Criminal Practice § 11.09 **Modification or revocation of bail**, i.e., "In **Marcum v Broughton**, the Court held that **after bond has been set by the court, the bond may not be increased or revoked without a change in the defendant's status**. The Court stated that **increasing the bond without any reason would be an arbitrary action in violation of § 2 of the Constitution of Kentucky**" (emph. added); Kentucky Criminal Practice § 11.10 **Termination of right to bail by operation of law**, i.e., "The setting aside of the judgement of conviction and remanding for a new trial would place the defendant in the same position as he was prior to conviction, thus raising a good ground for reducing the amount of the bail to the pre-conviction level."; and CP#1, R. Overstreet/D. Tapp, 04/09/98, 13:22:25, et seq.

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102. On April 20, 1998, Tapp filed a "Motions to Dismiss Count Two of the Indictment" on grounds that **the Commonwealth's "case-in-chief" with respect to that charge was based upon acts alleged to have occurred while Akers was not subject to a valid "Domestic Violence Order"** and, therefore, that one "essential element" of "First Degree Stalking" **was not satisfied**. [see Exhibit "QQQ" hereto and hereinabove paragraphs E-64 thru E-68][104]

103. On April 21, 1998, a "Pre-Trial Conference" was held at Fayette Circuit Court, during which Red Corn tendered her offer to "Amend Assault 1st - Assault 4th - 12 mos; Stalking 1st - 5 yrs." [see Exhibit "RRR" hereto]

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[104] **The required elements** of "Stalking in the First Degree -- 508.140" are: "(1) **Intentionally** (2) Stalk another person; and (3) Make an explicit or implicit threat **with intent** to place that person in **reasonable fear** of: (a) Sexual contact as defined in KRS 510.010, or (b) Serious physical injury, or Death; and (4)(a)(i) A protective order or another judicial order as provided in KRS Ch 403 has been issued to protect same victim, and (ii) **Defendant has been served with the summons or order or been given actual notice**; [or (b)(i), (c)(i), and (d) **do not apply**]; and (5) **Venue**." [West Group/Westlaw Publishing, Kentucky Revised Statutes, 1995 Edition (emph. added)]. **See also**: Hereinabove paragraphs E-51 thru E-68. Notwithstanding that **it should be obvious that Akers did not intend to "stalk" Bishop, in any manner**, there can be **no question that his acts**

upon which Kentucky officials relied (i.e., threatening Bishop with a "lawsuit") do not reach the "intent" element of K.R.S. 508.140(3). Further, and that which is the subject matter of Tapp's motion, there can be **absolutely no question that Kentucky had no "personal jurisdiction" over Akers on July 7, 1995, regardless of the context** in which Bishop perceived his "go for the throat" comment. **See additionally**: Hereinabove paragraphs E-51, E-54, E-64 thru E-68, & E-72 thru E-82 together with corresponding footnotes thereto; **K.R.S. 500.060** [supra, page 31 hereof] together with corresponding footnote [32] thereto; and **U.S. v. Casciano, 927 F.Supp. 54 N.D.N.Y. 1996**, i.e., "11. ...**For purposes of crossing a state line** with intent **to engage in conduct in violation of protective order**, **if court issuing order has failed to obtain personal jurisdiction** over defendant by service of process, **then order was invalid and prosecution cannot survive**. 18 U.S.C.A. § 2262(A)(1); 12. Due process clause requires that notice be reasonably calculated, **under all circumstances**, to apprise interested parties of penalty of an action and afford them an opportunity to present their objections. **U.S.C.A. Const. Amend. 5**." (emphasis added)

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104. On May 20, 1998, a hearing was conducted pursuant to those "Motions" in hereinabove paragraphs E-100 & E-101.[105] **After having effectively OVERRULED all three motions**, Overstreet made the following statement to the parties **on the record** [see CP#1, R. Overstreet, 04/24/1998, 14:29:50]:

> Overstreet: "Maybe I'm wrong, **and I haven't read the Court of Appeals opinion**, but wasn't their problem -- (emphasis added)

[**Note**: The period of time covered by the indictment for Count 2: First Degree Stalking had already been ammended to read: "from November 1994 to May 1995" on May 8, 1998. See Exhibit "SSS" hereto and TT#1, M. Radomile/L. Red Corn/R. Overstreet, 10/26/98, 13:31:00, et seq.]

105. On May 5, 1998, Akers was hired as a Project Manager for Interkal/GDS Seating, Incorporated, of Kalamazoo, Michigan, and Fountain Inn, South Carolina, and assigned "full charge" authority of their $4,700,120.00 contract for the Tennessee NFL Stadium in Nashville, Tennessee. [see Exhibit "TTT" hereto]

106. (a) During the succeeding months of May, 1998 until Akers' re-trial on October 26, 1998, Akers made every reasonable attempt to finally resolve all "criminal matters" in Kentucky...

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[105] Red Corn stated, **on the record**, that: "**Although [Akers] was not on actual notice of the extension** [of the previous Domestic Violence Order], **we felt like he shouldn't be allowed to benefit from not making himself available to be served**..." [see CP#1, L. Red Corn, 05/08/98, 14:41:05, et seq.; CP#1, L. Red Corn/D. Tapp, 05/29/98, 14:27:05, et seq.; hereinabove paragraphs E-51, E-54, E-64, E-65, E-66, E-62 thru E-70, **esp. E-71**, E-72 thru E-83, E-86, & E-96 together with all corresponding footnotes thereto; **U.S. Const. Amend. 5** [supra, page 7 hereof together with corresponding footnote [5]]; **U.S. Const. Amend. 14** [id., page 10 hereof together with corresponding footnote [6]]; and **U.S. v. Casciano, 927 F.Supp. 54 N.D.N.Y. 1996** [hereinabove footnote [104]]. **Red Corn further stated that she "strongly disagree[d] with the [Kentucky] Court of Appeals..."** as to the relevancy of her proposed evidence of "other bad acts". [see CP#1, L. Red Corn, 05/08/98, 14:47:45, et seq.]

and to that desired end, retained Earnest W. Williams (a former U. S. Attorney for the Middle District of Tennessee, hereinafter "Williams"), to negotiate a resolution thereof, but Akers could not **conscienably accept** Red Corn's offers of: (a) "5 years for a guilty plea of 1st degree stalking and 4th degree assault"; **then** (b) "4 years for a guilty plea of 1st degree stalking stalking and 4th degree assault"; and **finally**, (c) "5 years probation for a guilty plea of 1st degree stalking 4th degree assault". [see Collective Exhibits "UUU" hereto]

107. (a) On September 5, 1998, Williams conveyed to Akers the results of his meeting with Red Corn on September 2, 1998, and her resolution offer in hereinabove paragraph 106(d) with the express conditions that: (b) The Commonwealth Attorney's Office for the [Kentucky] Twenty-second Judicial District had "no problem with [the offer] but that [they didn't] know whether Overstreet [would] agree to it"; and (c) that "[Akers would] have to hire someone who [Overstreet] trust[ed] (i.e., either Mike Maloney, Larry Roberts, or Jim Lowrey, all of

whom are attorneys in the Lexington, Kentucky, area and then supporting Overstreet's campaign for a seat on the Kentucky Supreme Court) to present it to [Overstreet]."[106]

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[106] See: **ARTICLE IV-SECTION 2 [1.], U.S. CONST.** [supra, page 6 hereof], i.e., "The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states"; **U.S Const. Amend. 4** [supra, page 6 hereof], i.e., "The right of the people to be secure in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated" (emphasis added); **U.S. Const. Amend. 14** [id., pages 10 & 11 hereof], i.e., "**All persons** born or..." (continued, page 138 hereof)

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[106] **U.S. Const. Amend. 14** (continued from page 137 hereof): "...naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**." (emphasis added); **ARTICLE 1, SECTION 8, Constitution of Tennessee** [supra, page 18 hereof], i.e., "That **no man shall be taken or imprisoned, or disseized of his free-hold, liberties or privileges**, outlawed, **or exiled or in any manner destroyed or deprived of his life, liberty, or property, but by the judgement of his peers or the law of the land**" (emphasis added); **Ky Const § 2. Absolute and arbitrary power denied** [supra, page 26 hereof], i.e., "**Absolute and arbitrary power over** the lives, liberty and property of **freemen exists nowehere in a republic, not even in the largest majority**" (emph. added); **Ky Const § 26** [supra, page 28 hereof], i.e., "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**" (emph. added); **TITLE 18 U.S.C. § 875. Interstate communi-cations** [supra, page 12 hereof], i.e, "(d) Whoever, **with intent to extort** from any person, firm, association, or corporation, **any money or other thing of value, transmits in interstate** or foreign commerce **any communication** containing any threat to injure the property **or reputation** of...another...**or any threat to accuse...any other person of a crime**, shall be fined under this title or imprisoned not more than two years, or both." (emphasis added); **TITLE 18 U.S.C. § 2. Principals**: "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commision, **is punishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 5. United States defined**: "The term 'United States', as used in this title in a territorial sense, includes **all places** and waters, continental or insular, **subject to the**

jurisdiction of the United States, except the Canal Zone." (emph. added); **TITLE 18 U.S.C. § 1961** [supra, page 14 hereof]: "(1) 'racketeering activity' means...; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), ...section 1503 (relating to obstruction of justice); ...section 1512 (relating to tampering with a witness, victim, or an informant); (2) 'State' means **any State** of the United States, **any territory** or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) 'person' includes any individual, or entity capable of holding a legal or beneficial interest in any property; (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and **any union or group of individuals associated in fact** although not a legal entity; (5) 'pattern of racketeering activity' **requires at least two acts** of racketeering activity, one of which occurred after the effective date of this chapter and at least one of which occurred within ten years after the commission of a prior act of 'racketeering activity'" (emphasis added); **TITLE 18 U.S.C. § 1962** [supra, page 14 hereof], i.e., "(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, **to use or invest, directly or indirectly, any part of such income**, in..." (continued, page 139 hereof)

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108. On October 16, 1998, Overstreet **denied Akers the right to be heard and the right to *pro se* representation**[107] and further stated: "**Besides, I think I already know how the jury is going to rule in this case.**" [see CP#1, M. Radomile/J. Akers/R.Overstreet, 10/16/98, 11:29:00, et seq.]

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[106] **TITLE 18 U.S.C. § 1962** (continued from page 138 hereof): "...aquisition of any interestin, **or the activities of which affect**, interstate commerce; (d) It shall be unlawful for any person **to conspire** to violate any of the provisions of subsection (a), (b), or (c) of this section" (emphasis added); **K.R.S. 514.080 Theft by extortion**: "(1) A person is guilty of theft by extortion when he intentionally obtains property of another **by threatening to**: (b) **Accuse anyone of a criminal offense**; or (c) **To expose a secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute**...; (3) Theft by extortion is a Class A misdemeanor unless the value of the **property obtained is three hundred dollars or more**, in which case it is a **Class D felony**." (emph. added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: "**Every person** who, **under color of any statute, ordinance, custom**, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be**

subjected, any citizen of the United States or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); and **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** ...for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen equal proection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, **or class of persons**, to the equal protect-tion of the laws; (3) ...**in any case of conpiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added)

[107] See: **ARTICLE IV-SECTION 2 [1.], U.S. CONST.** [supra, page 6 hereof]; **U.S. Const. Amend. 14** [id., page 10 hereof]; **TITLE 28 U.S.C. § 1654**: [id., page 16 hereof], i.e., "In all courts of the United States, **the parties may plead and conduct their own cases personally** or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." (emphasis added); **Ky Const § 2.** [supra, page 26 hereof]; and "**Due process of law**" defined, footnote [5] [supra, page 8 hereof].

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109. As well on October 16, 1998, Akers served, by "**Certified Mail-Return Receipt Requested**", copies of all those Affidavits of the Plaintiff James G. Akers, Deborah L. Harvil, Woodsie E. Akers, Alan P. Akers, A. Wayne Akers, Stacy B. Akers, Beaulahvene Brown, Darryl Brown, Charlotte S. Kirby, and Dennis R. Akers, in hereinabove paragraph E-1 and which such affidavits are appended hereto as Exhibits "B" through "K", respectively.

110. On October 26, 1998, Akers' "re-trial", pursuant to the hereinabove "amended indictment", was commenced and was a **virtual** "**repeat performance**" of the first trial in May of 1996 [see "Notice of Evidence Pursuant to KRE 404(b), Exhibit "VVV" hereto; and "Final Judgement [&] Sentence of Imprisonment" [Exhibit "WWW" hereto]. As in hereinabove

paragraph E-86, some of the "irregularities" and/or hereunto relevant portions of Akers second trial include, **but are in no way not limited to**, the following:

I. Pre-trial Matters:

(a) Overstreet refused to recuse herself from the bench in Akers' trial on grounds that she was a member of the same church as the Commonwealth's complaining witness and a majority of the additional Commonwealth witnesses and based upon previous statements by Overstreet indicating unquestionable and extreme bias; &

(b) Overstreet denied Akers' inalienable right to participate in his defense, esp., to participate in/attend all bench conferences with respect to his retrial [TT#1, M. Radomile/R. Overstreet, 09:15:40, et, seq.]

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II. Jury Selection Phase:

(a) Overstreet referred to Bishop as the "the victim" upon her initial address to the prospective jurors [TT#1, R. Overstreet, 10/26/98, 09:44:45]; &

(b) Eleven of the prospective jurors came forward and admitted that either they or someone intimately associated with them had previously been the "victim" of "domestic violence", yet only three were excused from the panel [TT#1, M. Radomile/L. Red Corn/R. Overtstreet, 10/26/98, 10:13:45].

III. Jury Voir Dire Phase:

(a) Red Corn refers to the case as being termed "domestic violence" [TT#1, L. Red Corn, 10/26/98, 09:50:15]; &

(b) Red Corn intentionally misled the jury with respect to the essential elements of "assault in the first degree" and with respect to the definitions of "deadly weapon" and/or "dangerous instrument" [TT#1, L. Red Corn, 10/26/98, 10:17:05, et seq.].

IV. OPENING ARGUMENTS:

(a) Red Corn intentionally misled the jury with respect

to the time period of the alleged "stalking", i.e., "starting in November until August are evidence of the stalking." [see TT#1, L. Red Corn, 10/26/98, 11:44:30 and hereinabove paragraph E-103]; &

(b) Defense Attorney Marcel Bush Radomile renewed and entered her "blanket objection" to introduction of evidence of alleged "bad acts" which occurred after the period of time excluded by the amended indictment for the "stalking" charge inasmuch as those allegations extended...

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into that period when Akers was not aware of the "extension" of the original "Domestic Violence Order" and such evidence was, therefore, irrelevant to the instant case under trial [see hereinabove paragraph E-103]; Radomile as well renewed her previous "Motion for Severance" of the charges on re-trial consistent with the Court of Appeals Opinion in hereinabove paragraph E-95. Overstreet again "**OVERRULED**" both the objection and renewed motion [TT#1, M. Radomile/L. Red Corn/R. Overstreet, 10/26/98, 13:31:00, et seq.].

V. PROSECUTION'S CASE-IN-CHIEF:

(a) As at Akers' first trial in May of 1996, Red Corn introduced evidence of Akers' previous testimony [see TT#1, B. Taylor/L.Red Corn, 10/26/98, 13:45:50] in a "civil proceeding" and which such testimony was **clearly inadmissible pursuant to the provisions of K.R.S. 403.780** [supra, page 31 hereof]; &

(b) Upon cross-examination of prosecution witness, Bernessa Taylor, by Akers' Defense Attorney, Marcel Radomile, the following exchange ensued between Radomile, Red Corn, and Overstreet [see TT#1, 10/26/98, 13:46:40, et seq. (emphasis added)]:

Radomile: So, Bernessa, you said you've worked for nineteen years in the Domestic Violence office?

Taylor: Not in Domestic Violence -- I've worked for nineteen years in District Court -- And in Domestic Violence since 1991.

Red Corn: Your Honor, could we approach the bench for just a moment? ...

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Radomile: Bernessa, how many times have you been to court with domestic violence issues?

Taylor: Several.

Radomile: Would you say hundreds?

Taylor: (affirmatively)

Radomile: **Hundreds of times, then. And while you've worked in Domestic Violence, you've had hundreds of people come in and get petitions from you? Is that right?**

Taylor: **Yes.**

Radomile: **Uh -- How hard is it to get an Emergency Protective Order?**

Taylor: **Well -- you just -- as a victim, you have to allege that there's been an act of domestic violence or abuse or threatening.**

Radomile: So, can anyone go in there and

apply for a petition for an Emergency Protective Order?

Taylor: It has to be a family member that's -- you know -- in the guidelines of the statute.

Radomile: So, as long as it's someone who's living in the same household, then that person can go in and apply for a Domestic Violence Order? Is that right?

Taylor: Yes (affirmatively).

Radomile: And to apply for and E. P. O., they don't have to go to court, is that right?

Taylor: No.

Radomile: They just fill out a form? --

Taylor: Yes.

Radomile: **And if they allege the things that meet the criteria, then they're probably going to get an E. P. O. Is that right?**

Taylor: **Yes -- if the judge finds that there's been an act of domestic violence or abuse.**

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Radomile: **Do people ever lie on these petitions?**

Red Corn: **Object**. I don't know how she could know.

Overstreet: **Sustained**.

Radomile: Have you ever been in a court hearing on an Emergency Protection Order where the --

Red Corn: **Object to the relevancy**.

Overstreet: Approach the bench.

[*Bench conference*]:

Overstreet: What's your question gonna be?

Radomile: Well -- it's -- uh -- **if this process lends itself to abuse by people** -- she's been there. **She's been in court hundreds of times. She's taken hundreds of Domestic Violence Petitions**. You know -- because - uh -- **everyone getting a divorce is going to start out in Domestic Violence Court to try to get favorable conditions for the divorce. The process lends itself to abuse and everybody knows it**.

Red Corn: **The basis for my objection is that others have come to court and lied is not relevant as to whether or not this witness came to court and lied**. And what she's trying to get at is certainly something she can argue in her closing argument. But to elicit testimony from a clerk that people in the

past have come in and lied is not relevant testimony regarding whether this witness has lied...

Overstreet: Well, I think at least it's gonna be **-- it opens up a whole new area and 'cause we'd have to re-try every domestic case we've ever had and I can't let you do that. ... I'll sustain the objection.**

(c) Red Corn interjected numerous "evidentiary harpoons" of irrelevant/inadmissible testimony not included in her "Notice...

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pursuant to K.R.E. 404(b)" [Exhibit "DDDD" hereto] including, but not limited to: (i) Insinuations that Akers had changed locks on the Akers' marital residence after those events as depicted in hereinabove paragraph E-31[108] for the express purpose of denying Bishop access thereto [TT#2, C. Bishop, 10/26/00, 15:00:55; TT#2, J. Preston, 10/27/98, 14:26:10. (**See:** TT#3, A. P. Akers, 10/27/98, 17:59:20, et seq., 18:22:00; and TT#3, J. G. Akers, 10/28/98, 13:42:00, et seq., & 14:30:55]; (ii) That Akers had damaged a car Bishop was driving at some time in 1992 [TT#2, C. Bishop, 10/27/98, 09:25:25]; and (iii) That, at some time during the early 1980's, Akers "had guns" [TT#2, C. Bishop, 10/27/98, 10:46:05, et seq., **esp., 10:46:50**; Yet, (iv) Akers' **motions for mistrial** were **"OVERRULED"** by Overstreet. [see esp., TT#2, M. Radomile/L. Red Corn/R. Overstreet, 10/27/98, 10:49:10];

(d) Bishop, under the encouragement, guidance, and sanction of Red Corn and Overstreet, respectively, committed numerous acts of "fraud"[109] including, but not limited to: (i) testimony with respect to herein paragraph E-31 to the effect that Akers had "pulled [her] out of the bed by the hair of [her] head and drug...

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[108] **This evidence was not noticed pursuant to K.R.E. 404(b)** [supra, page 40 hereof]; **was, therefore, both irrelevant and inadmissible pursuant to K.R.E. 404(c)** [id.]; was **simply not true with respect to Akers' intentions in doing so**; neither **Akers or son, Alan, had any recollection thereof and were totally unprepared to testify as to the truth or falsity thereof due to Red Corn's intentional failure to provide notice pursuant to K.R.E. 404(b); and, regardless, was not relevant** inasmuch as **it had no bearing whatsoever to the charges for which Akers was being tried**.

[109] Footnote [87] [supra, page 111 hereof] is re-stated herein the same as if set forth in its entirety. See also: **TITLE 18 U.S.C. § 1961** [supra, page 14 hereof]; and **TITLE 18 U.S.C. § 1962** [supra, page 14 hereof].

[her] out in the hallway", struck her "repeatedly in the face with his fist", "threw her through [and/or into] a wall" [TT#2, C. Bishop, 10/27/98,09:55:35, et seq.; and TT#2, J. Preston, 10/27/98, 14:26:50)]; and ordered Bishop to leave the marital home [TT#1, C. Bishop, 10/26/98, 14:29:50, et seq.,]; (ii) That (Bishop) had **never previously experienced any problems with her neck prior to May 4, 1994** [TT#1, C. Patrick, 10/26/98, 15:07:20 et seq.];[110] (iii) That Akers had, **at some time in the early 1990's**, severely damaged a "picture" of Bishop which had been photographed when Bishop was "eighteen or nineteen" years of age [TT#1, C. Bishop, 10/26/98, 16:16:25, et seq., TT #2, C. Bishop/L. Red Corn, 10/27/98, 09:10:55];[111] & (iv) introduced into evidence and **showed to the jury a retouched photograph** of an incident which occurred on August 10, 1989, which fraudulently...

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[110] Footnote [87] [supra, page 112 hereof] is re-stated herein the same as if set forth in its entirety. See also: Exhibits "B" & "D" thru "K", respectively, hereto; **TITLE 42 U.S.C. § 1985(2), (3)** [supra, pages 16 & 17 hereof]; and "**Fraud**' defined", footnote [7] [supra, page 13 hereof].

[111] Footnote [78] [supra, page 100 hereof] is re-stated herein the same as if set forth in its entirety. See also: Hereinabove paragraph E-86.V(c)(iv) and

corresponding footnote [88] thereto; **TITLE 18 U.S.C. § 1512 (b)(2)(B)** [supra, page 14 hereof]; **TITLE 42 U.S.C. § 1985(2), (3)** [id., pages 16 & 17 hereof]; and footnote [7] [supra, page 13 hereof], i.e., "**Fraud**" defined: "A **false representation of a matter of fact**, whether by words or by conduct, **by false or misleading allegations, or by concealment of that which should have been disclosed**... A generic term, embracing all multifarious means which human ingenuity can devise, ...**to get advantage over another by false suggestions or by suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and conceal-ments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false, whether it be direct falsehood or by inuendo**, by speach or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

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depicted Bishop with swelling on her forehead as evidence of injury caused by Akers [TT#2, C. Bishop, 10/27/98, 09:23:45, 09:24:15, 09:48:55, et. seq.]; **yet, nonetheless**, (v) Bishop **admitted she had never filed an "assault" charge against Akers until initiated by the Fayette County [Kentucky] Grand Jury on November 6, 1995** [TT #2, 09:40:25].

(e) Vaughan testified that: (i) **Bishop did not disclose to him, nor did he inquire as to Bishop's history of any similar problems with her neck** [TT#1, J. Vaughn, 10/26/98, 16:27:40, 16:47:30, 16:53:00]; (ii) **Bishop's X-ray and M.R.I. Reports revealed that she had long-standing "Degenerative Disc Disease"** [id., 16:37:49] **which had been developing over a period of several years prior to May 4, 1994** [id., 16:51:40] and which could have, **in itself, resulted in herniated discs** [id., 16:49:00, 16:50:25, 16:51:15]; (iii) **Bishop's surgery was the result of those herniated discs** [id., 16:31:40, 16:32:10, 16:34:30, 16:36:00; **and that "[he] would say that bending, rotating, twisting of [Bishop's] neck is going to be limited because of the surgery**" [TT#1, J. Vaughan, 10/26/98, 16:43:00, et seq. (emphasis added)].

(f) Fulmer testified that, **upon his initial examination of Bishop on May 16, 1994, "her range of motion appeared to be normal**" [TT #2, A. Fulmer, 10/27/98, 10:55:00, 11:00:20] and

that "**her X-rays were normal**" [TT #2, 10/27/98, 10:55:55].

(g) Layne, under encouragement, guidance, and/or sanction of Bishop, Red Corn and Overstreet, respectively, committed numerous acts of "fraud" including, **but not limited to**, testimony that: (i) Akers had...

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made telephone calls to, among others, Layne, Bishop, and Bishop's attorney in June and July of **1994**; (ii) that those alleged calls were "loud", "threatening", and "alarming" in nature [TT#2, T. Layne, 10/27/98, 11:19:15, et seq. [See also hereinabove paragraphs E-45 & E-46], and (iii) resulted in Layne taking his family on vacation earlier than planned; and (iv) SCC hiring security guards and installing a new security system. (v) Layne now fraudulently further alleges that Akers had appeared at Southland Christian Church at some time **after** May 4, 1994 [TT#2, T. Layne, 10/27/98, 11:46:50 (**see previous testimony of Layne @ TT#2, 05/21/96, 09:32:35, wherein Layne admits that Akers did not appear at Southland Christian Church after May 4, 1994**)]; together with hereinabove paragraphs E-45, E-46, & E-64)].[111] Upon cross-examination, **Layne admits that he had "never heard [Akers'] side of the story**" [TT#2, T. Layne, 10/27/98, 11:33:50]; and (vi) **Overstreet and Red Corn would not allow the jury to view video tapes of Bishop's activities at Southland Christian Church which would have conclusively shown that any allegations of Bishop's "prolonged" impairment to her...**

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[111] **Footnote** [7] [supra, page 13 hereof] **is re-stated herein** the same as if set forth in its entirety. **See also**: TITLE 18 U.S.C. § 1512(b)(2) [supra, page 14 hereof]; and TITLE 42 U.S.C. § 1985(2) & (3) [id., pages 16 & 17 hereof].

[112] See: **K.R.E. 401** [supra, page 40 hereof], i.e., **DEFINITION OF "RELEVANT EVIDENCE"**: "Relevant evidence" means evidence having any tendancy to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."; **K.R.E. 402** [id.], i.e., "All relevant evidence is

admissible, except as otherwise provided by the Constitution of the United States and the Commonwealth of Kentucky, by the acts of the General Assembly of the Commonwealth of Kentucky, by these rules, or..." (continued, page 149...)

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neck were fraudulent [TT#2, T. Layne/M.Radomile/L. Red Corn/R. Overstreet, 10/27/98, 11:37:05, et seq.];[112]

(h) Fleming, under the encouragement, guidance, and/or sanction of Bishop, Red Corn and Overstreet, respectively, committed numerous acts of "fraud"[113] including, **but not limited to**, testimony with respect to Bishop's physical condition, demeanor, and emotional state on the morning of May 5, 1994 [TT#2, D. Fleming, 10/27/98, 13:23:10, et seq.];

(i) Mildred Patrick, under encouragement, guidance, and/or sanction of Bishop, Red Corn, and Overstreet, respectively, committed numerous acts of "fraud"[114] including, **but not limited to**, testimony that: (i) Akers had telephoned her on numerous occasions and "threatened" her and others and that Akers was "gonna do this or gonna do that if [she] didn't tell him where [Bishop] was." [TT#2, M. Patrick, 10/27/98, 13:50:35,

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[112] **K.R.E. 402** (continued from page 148 hereof): "...by other rules adopted by the Supreme Court of Kentucky"; **K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES** [id.]: "**(a) Character Evidence Generally**: Evidence of a persons character is **not admissible** for the purpose of proving action in conformity therewith on a particular occasion, except: (2) *Character of Victim Generally*: Evidence of a pertinent trait of character of the victim of the crime **offered by the accused**...; **K.R.E. 405. METHODS OF PROVING CHARACTER** [id.], i.e., "**(c) Specific Instances of Conduct**. In cases in which character of a person is an essential element of a charge, claim, or defense, **proof may also be made of specific incidents in that person's conduct**." (emphasis added); and **K.R.S. 500.070 Burden of proof; defenses** [supra, page 31 hereof], i.e., "(2) **No Court can require notice of a defense prior to trial time**." (emphasis added)

[113] **Footnote 7** [supra, page 13 hereof] is re-stated herein the same as if set forth in its entirety. **See also**: **TITLE 18 U.S.C. § 1512 (b)(2)** [supra, page 14 hereof]; and **TITLE 42 U.S.C. § 1985(2), (3)** [id., pages 16 & 17 hereof];

[114] Footnote [7] [supra, page 13 hereof] is re-stated herein the same as if set forth in its entirety. See also: **TITLE 18 U.S.C. § 1512 (b)(2)** [supra, page 14 hereof]; and **TITLE 42 U.S.C. § 1985(2), (3)** [id., pages 16 & 17 hereof];

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et seq.]; but then (ii) **admitted that all such calls "stopped about a month or two before [Akers] went to Minnesota [in May of 1994]"** [TT#2, M. Patrick, 10/27/98, 13:53:55]; (iii) M. Patrick then **fraudulently stated that Akers had "showed up" at her home on two occasions after the "Domestic Violence Order" of May 19, 1994, had been entered**. [TT#2, M. Patrick, 10/27/98, 13:59:00];

(j) Bishop's brother, Wendell Patrick, stated that all offensive and/or alarming telephone calls which he had received from Akers occured on "May 27th or 28th until the end of June [1995]", that is, **after expiration of that "Domestic Violence Order" entered May 19, 1994**. [TT#2, W. Patrick, 10/27/98, 14:07:10, 14:08:10];

(k) **Red Corn fraudulently introduced the video-taped testimony of previous prosecution witness Allen Rushing** (from Akers' first trial in May of 1996) [see TT#2, M. Radomile/L. Red Corn/ R. Overstreet, 10/27/98, 14:36:45, et seq., esp. 15:05:40]; and then **further perpetrated her fraud by playing in excess of seventeen minutes (or 74%) of the unedited version thereof for the jury** [TT#2, A. Rushing, 10/27/98, 15:08:40 through 15:26:40]; and Akers' "Motion for Mistrial" was "**OVERRULED**" [id., 15:28:05, 15:52:20];

(l) Dr. Mark Einbecker testified that: (i) upon his initial examination of Bishop on May 17, 1994, "**her range of motion was intact**" [TT#2, M. Einbecker, 10/27/98, 16:24:25] and that he "wasn't sure if [Bishop] was in **physical pain or emotional pain**" (id., 16:26:40); (ii) that subsequent X-rays revealed "that [Bishop] had some **degenerative arthritis that...was of a long-standing nature**" [id., 10/27/98, ...

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16:27:25]; and (iii) **there was "no doubt in [Dr. Einbecker's] mind that [Bishop] had a 'pre-existing condition' and that that pre-existing condition could have caused [Bishop's] herniated discs"** (id., 10/27/98, 16:33:45); &

(m) Akers' then motions for a "Directed Verdict of Acquittal" on the charge of "First Degree Assault" due to the "insufficiency of the evidence" and "First Degree Stalking" due to "insufficiency of the evidence and lack of jurisdiction" were "**OVERRULED**" [TT#2, M. Radomile/L. Red Corn/R. Overstreet, 10/27/98, 16:34:20, et seq.].

VI. DEFENSE PHASE:

(a) Having **fraudulently portrayed Akers to the jury as a perpetual "drunkard" with an inherent propensity for violence and abuse**;

(b) Having already received a **concise preview of the testimony of Akers' defense witnesses to the contrary** as in hereinabove paragraph E-108, **which were intended solely for the purpose of eliciting a "Writ of Prohibition"** from the Kentucky Court of Appeals to prevent a "repeat" of those atrocities in Akers' first trial in May of 1996;

(c) **and being fully-cognizant that such defense testimony would be devastating to their cases against Akers**;

(d) **Overstreet and Red Corn then jointly and overtly effected the furtherance of their conspiracy to deny Akers a fair trial, and acting in concert one with the other** in clear, distinct, and blatant violation of the **of the Kentucky Rules of Evidence** and of all those **superordinate provisions** of the **United States Constitution, United States Codes Annotated, Constitution of Kentucky**, and **Kentucky Revised Statutes** as are...

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hereinafter enumerated;

(e) **fraudulently supressed**[115] **relevant, admissible, and essential testimony of all defense witnesses** by intimidating, threatening, hindering, and otherwise impeding their testimony

[116] in that manner as shown in TT#2, **C. Kirby**/M. Radomile/L. Red Corn/R. Overstreet, 10/27/98, 16:56:45, 17:00:00, et seq.; TT#2, **D. R. Akers**/M. Radomile/L. Red Corn/...

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[115] See: "**Fraud**" defined [footnote [7], supra, page 13 hereof], i.e., "A **false representation of a matter of fact**, whether by words or by conduct, **by false or misleading allegations, or by concealment of that which should have been disclosed**..., by **false suggestions or by suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false**, whether it be direct falsehood or by inuendo, by speach or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

[116] See: **Footnote [81]** [supra, page 102, 104, & 105 hereof] is re-stated herein the same as if set forth in its entirety. **See also**: **K.R.E. 401** [supra, page 40 hereof], i.e., **DEFINITION OF "RELEVANT EVIDENCE"**: "Relevant evidence" means evidence having any tendancy to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."; **K.R.E. 402** [id.], i.e., "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States and the Commonwealth of Kentucky, by the acts of the General Assembly of the Commonwealth of Kentucky, by these rules, or by other rules adopted by the Supreme Court of Kentucky"; **K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES** [id.], i.e., "**(a) Character Evidence Generally**: Evidence of a persons character is **not admissible** for the purpose of proving action in conformity therewith on a particular occasion, except: (1) *Character of accused*: Evidence of a pertinent trait of character or of the general moral character **offered by the accused** ...; (2) *Character of Victim Generally*: Evidence of a pertinent trait of character of the victim of the crime **offered by the accused**..." (emphasis added); and **K.R.E. 405. METHODS OF PROVING CHARACTER** [id.], i.e., "**(a) Reputation or opinion.** In all cases in which evidence or a trait of character of a person is admissible, proof **may be made** by testimony as to general reputation in the community or by testimony **in the form of opinion**. **(c) Specific Instances of Conduct**. In cases in which character of a person is an essential element of a charge, claim, or defense, **proof may also be made of specific incidents in that person's conduct**." (emphasis added)

R. Overstreet, 10/27/98, 17:14:30, 17:16:20, 17:22:00, 17:22:15, 17:22:30, 17:29:30, 17:31:40, & 17:31:55; TT#2, **A. P. Akers**/M. Radomile/L. Red Corn/R. Overstreet, 10/27/98, 16:56:45, et seq., 18:02:30, 18:06:30; TT#2, **A. W. Akers**, 19:11:40, et seq.; TT#3, W. E. Akers, 09:30:00, 09:38:00, **esp. 09:38:30**, 09:39:45, 09:42:25 & 09:52:35; TT#3, **D. L. Harvil**, 10/28/98, 09:55:15, 10:00:15, 10:03:25, 10:03:50, 10:09:30; and TT#3, **J. G. Akers**, 13:20:00, 13:21:00, 13:32:30, 13:32:45, 13:44:00, 13:49:10, and **more specifically including, but not limited to**: (i) Overstreet and Red Corn suppressed the testimony of Akers' brother, Dennis R. Akers, ***et al***, with respect to specific incidents of Akers' conduct which was **clearly relevant and amissible pursuant to K.R.E. 401, 402, 404(a)(1) & (2), 405(c)**; and (ii) Overstreet, upon the objection and argument by Red Corn, instructed defense witness, Deborah L. Harvil, and **several** defense witnesses that they "**[could not] testify as to anything that was said by anyone other than [Bishop]**" **(e.g., about Bishop's pre-xisting neck/back condition), or with respect to Akers' emotional state during the period of time of the alleged "stalking"**; &

(f) Overstreet and Red Corn would not allow the jury to see video tapes of Bishop's activities at Southland Christian Church which would have shown that allegations of Bishop's "prolonged" impairment to her neck as the result of any conduct of Akers were fraudulent[117] [TT#2, T. Layne/M.Radomile/L. Red Corn/R. Overstreet, 10/27/98, ...

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[117] **Hereinabove footnote [116]** is re-stated herein the same as if set forth in its entirety.

11:37:05]; &

(g) **Overstreet and Red Corn suppressed the introduction of Akers' telephone records encompassing the entire period of time of the alleged stalking and beyond**[118] and which prove that **Fayette [Kentucky] Circuit Court did not, in fact, have either "'personal' or 'subject matter' jurisdiction" over Akers with respect to any "stalking" charge** [TT#3, J. G.

Akers, M. Radomile/L. Red Corn/R. Overstreet, TT#3, 14:20:25, 14:21:30, 14:22:00, & 15:04:30].

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[118] **Hereinabove footnote** [116] is re-stated herein the same as if set forth in its entirety. See also: **K.R.S. 500.070 Burden of proof; defenses** [supra, page 32 hereof], i.e., "(2) No Court can require notice of a defense **prior to trial time**." (emphasis added); **UNITED STATES CONSTITUTION**: **ARTICLE I - SECTION 9** [supra, page 5 hereof], i.e., "[1.] The **migration** or importation of such persons as any of the states...shall think proper to admit, **shall not be prohibited**...; [3.] "No bill of attainer or ***ex post facto* law** shall be passed." (emphasis added); **ARTICLE I-SECTION 10** [id], i.e., "[1.] **No state shall...pass any** bill of attainer, ***ex post facto* law**, or law impairing the obligation of contracts, or grant any title of nobility." (emph. added); corresponding footnote [1] "**Ex post facto law**" defined: "A law passed **after the occurrence of a fact or commission of an act**, which retrospectively changes the legal consequences or relations of such fact or deed. A law is **unconstitutionally** **"ex post facto"** if it deprives a defendant of a defense to criminal liability that he had prior to enactment of the law. State v. Rogers, Ohio Com.Pl., 346 N.E.2d 352, 361. Art. I, § 9(CL3) and § 10 of U.S. Const. prohibit both Congress and the states from passing any ex post facto law. An ex post facto law is defined as a law which provides for the infliction of punishment upon a person for an act done which, when it was committed, was innocent; **a law which aggravates a crime or makes it greater than when it was committed**; **a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed**; **a law that changes the rules of evidence** and receives less or different testimony than was required at the time of the commission of the offense in order to convict the offender; **a law which deprives persons accused of a crime of some lawful protection to which they have become entitled**, such as protection of a former conviction or acquittal...; **every law which**, in relation to the offense or consequences, **alters the situation of a person to his disadvantage**. Wilensky v. Fields, Fla., 267 So.2d 1, 5." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emph. added)]; **ARTICLE IV-SECTION 2** [id.], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states"; [2.] "A person charged **in any state** with...felony, or other crime, **who shall flee from justice**, and be found in another state,..." (continued, page 155 hereof)

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[118] **ARTICLE IV-SECTION 2** (cont'd from page 154 hereof): "...shall be delivered up, to be removed to the state having jurisdiction of the crime." (emphasis added) and corresponding footnote [2], i.e., "**Interstate extradition** involves a significant restraint of liberty and, as such, **necessitates a showing**

of probable cause." Wellington v. State of S.D., D.C.S.D.1976, 413 F.Supp., 151. (emphasis added); Walton v. State, 1977, 566 P.2d 765, 98 Idaho 422; "**Probable cause** to find that a person to be extradited is a **fugitive from justice** in demanding state is a **condition precedent to valid extradition**." Ross v. Hegstrom, **1969, 254 A.2d 556, 107 Conn. 403** (emphasis added); "**In determining whether a party named in a requisition and rendition warrant is a fugitive from justice, a finding must be made** in substance that a crime is alleged, **that the named party committed the crime and fled from the demanding jurisdiction, and it must appear that accused was within the demanding state when crime was committed** so as to constitute him a fugitive by his commission of crime and his **later flight**." State v. Phillips, **1960,162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63** (emphasis added); "In extradition proceedings, inquiry is restricted to whether accused is substantially charged with crime in the demanding state, **and whether he was physically in the demanding state at time crime charged is alleged to have been committed**." People v. ex rel. Johnson v. Ruthazer, **1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905** (emphasis added); Clayton v. Wichael, **1966, 141 N.W. 2d 538, 258 Iowa 1037**; Wigehert v. Lockhart, **1946, 166 P.2d 988, 114 Colo. 485; Ex parte Foster, 1936, 61 P.2d 37, 60 Okla.Cr. 50**; "**No person may be lawfully removed from one state to another** by virtue of this [Sec. 2, cl. 2], **unless ...; 2. He has fled from justice**; ..., and **if either of these conditions are absent, the Constitution affords no warrant for** a restraint of the liberty of **any person**." Pierce v. Creecy, **Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113**; Ex parte Morgan, **D.C.Cal. 1948, 78 F.Supp. 756, affirmed 175 F.2d 404, certiorari denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed. 503**; "**Under this [Sec. 2, cl. 2] and Federal Extradition Act, 18 U.S.C.A.** former § 662 [now **§§ 3182, 3195**], **an extradition is unwarranted unless the accused is a fugitive from justice, and a 'fugitive from justice' is a person who commits a crime within a state and withdraws himself from such jurisdiction** without waiting to abide the consequences of his act". Ex parte Montoya, **1943, 135 P.2d 281, 170 Or. 499.** (emphasis added); **FIRST AMENDMENT** [id, page 7 hereof], i.e., "Congress shall make no law respecting...religion, or prohibiting the free exercise thereof; **or abridging freedom of speech...**"; (emphasis added); **FOURTH AMENDMENT** [id.], i.e., "The right of the people to be secure in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated, and **no Warrants shall issue, but upon probable cause**" (emph. added); **SIXTH AMENDMENT** [id., page 8 hereof], i.e., "In **all criminal prosecutions**, the accused shall enjoy the right to a speedy and public trial, **by an impartial jury** of the **State...wherein the crime shall have been committed**..."; (emphasis added); **FIFTH AMENDMENT** [id.], i.e., "No person shall **be held** to answer for ...infamous crime...**nor be deprived of**... **liberty**, or property, **without due process of law**" (emphasis added) and corresponding footnote [5] "Due process of law" defined: "Law in its regular course of administration through courts of justice. ...Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgement upon the question of life, liberty, or property, in its most comprehensive sense; ..." (continued, page 156 hereof)

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[118] **FOURTH AMENDMENT** (continued from page 155 hereof): "...to be heard, by testimony or otherwise, and to have the right of controverting every material fact which bears on the question of right in the matter involved. **If any question of fact or liability be conclusively presumed against him, this is not due process of law**. An orderly proceeding wherein a person is **served with notice**, actual or constructive, and **has an oppor-tunity to be heard and to enforce and protect his rights** before a court having power to hear and determine the case. ...**The concept of 'due process of law' as it is embodied in the Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious**... U. S. v. Smith, D.C. Iowa, 249 F.Supp. 515, 516. Fundamental requisite of 'due process' is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest... Trinity Episcopal Corp. v. Romney, D.C.N.Y., 387 F.Supp. 1044, 1084. **Aside from all else, 'due process' means fundamental fairness and substantial justice**. Vaughn v. State, 3 Tenn. Crim. App. 54, 456 S.W.2d, 879, 883. Embodied in the due process concept are the basic rights of a defendant in criminal cases and the requisites for a fair trial. These rights and requirements have been expanded by Supreme Court decisions and include, timely notice of a hearing or trial which informs the accused of the charges against him or her; **the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge**; the presumption of innocence under which **guilt must be proven** by legally obtained evidence and **the verdict must be supported by the evidence presented**; ...and **the guarantee that an individual will not be tried more than once for the same offense (double jeopardy)**." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]; **FOURTEENTH AMENDMENT** [id., page 10 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its juris-diction equal protection of the laws**" (emphasis added); **TITLE 18 U.S.C. § 2261. Interstate domestic violence**: (a) **Offenses. - (1) Crossing a State Line.-** [supra, page 15 hereof], i.e., "A person who **travels** across a State line...**with intent** to injure, harass, or intimidate that person's spouse or intimate partner, **and** who, in the course of or as a result of such travel, **intentionally commits a crime of violence and thereby causes bodily injury** to such spouse or intimidate partner, shall be punished as provided in subsection (b)." (emphasis added); **TITLE 18 U.S.C. § 2261A. Interstate stalking** [id.], i.e., "Whoever **travels** across a State line or within the... territorial jurisdiction of the United States **with the intent** to injure or harass another person, **and** in the course of, or as a result of, **such travel** places that person in reasonable fear of the death of, or serious bodily injury (as defined in section 1365(g)(3) of this title) to, that person or a member of that person's immediate family (as defined

in section 115 of this title) shall be punished as provided in section 2261 of this title." (emph. added); **TITLE 18 U.S.C. § 2262. Interstate violation of protection order: (a) Offenses. - (1) Crossing a State line. -** [id., pages 15 & 16 hereof], i.e., "A person who travels across a State line...with the intent to engage in conduct that - **(A)(i)** violates the portion of a protective order that involves protection against credible..." (continued, page 157 hereof)

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VIII. JURY INSTRUCTIONS:

(a) Overstreet fraudulently and unconstitutionally instructed the jury as to the definition of "dangerous instrument", i.e., "hands and feet" as "dangerous instruments". [see TT#4, R. Overstreet, 10/28/98, 15:58:30][119]

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[118] **TITLE 18 U.S.C. § 2262** (continued from page 156 hereof): "...threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued; or (ii) would violate this paragraph if the conduct occurred in the jurisdiction in which the order was issued; **and (B) subsequently engages in such conduct**, shall be punished as provided in subsection (b)." (emph. added); **TITLE 18 U.S.C. § 2265. Full faith and credit given to protection orders: (a) Full faith and credit. -** [id.], i.e., "Any protection order issued **that is consistent with subsection (b) of this section** by the court of one State...(the issuing State...) shall be accorded full faith and credit by the court of another State ...(the enforcing State ...) and enforced as if it were the order of the enforcing State...(b) Protection order. - A protection order issued by a State...**is consistent with this subsection if-** (1) such court has **jurisdiction over the parties** and matter under the law of such State...; **and** (2) **reasonable notice and opportunity to be heard is given** to the person against whom the order is sought sufficient **to protect that person's right to due process**. In the case of ex parte orders, **notice and opportunuty to be heard must be provided** within the time required by State...law, and **in any event within a reasonable time** after the order is issued, sufficient **to protect respondent's due process rights**." (emphasis added); **CONSTITUTION OF TENNESSEE: ARTICLE 1, SECTION 3. Freedom of worship** [supra, page 18 hereof], i.e., "That all men have a natural and indefeasable right to worship Almighty God to the dictates of their own conscience; **that no human authority can, in any case whatsoever, control or interfere with the rights of conscience.**" (emphasis added); **ARTICLE 1, SECTION 8. No man to be disturbed by law** [id.], i.e., "That **no man shall be taken or imprisoned, or disseized of his free-hold, liberties or privileges**, outlawed, **or exiled or in any manner destroyed or deprived of his life, liberty, or property, but by the judgement of his peers or the law of the land**." (emph. added); **Ky Const § 1 [page 26 hereof], i.e., "Rights of life,**

liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ...redress of grievances, bearing arms: "**All men** are, by nature, free and equal, and **have certain inherent and inalienable rights**, among which may be reckoned: ... **Second**: The right of worshipping Almighty God **according to the dictates of their consciences**; ...**Fourth**: The right of **freely communicating their thoughts and opinions** (emph. added); and **T.C.A. 39-17-308. Harassment.** - [id., page 21 hereof], i.e., "(a) A person commits an offense who **intentionally**: (2) **Places one (1) or more telephone calls ...in an offensively repetitous manner, or without a legitimate purpose of communication, and by this action knowingly annoys or alarms the recipient**; (b) **A violation of this section is a Class A misdemeanor**." (emphasis added)

[119] **See**: **K.R.S. 508.010** [supra, page 34 hereof] and footnote [36] thereto.

IX. CLOSING ARGUMENTS:

(a) Red Corn, under the sanction of Overstreet, intentionally and fraudulently "tampered with the jury" with respect to the probative value, admissibility, and relevance of Akers telephone calls in hereinabove paragraphs E-65 through E-68, and E-110.V(c), (g), (i), & (j) by **suppressing Radomile's correctly stated closing arguments that such evidence should not be considered** as proof with respect to Akers' guilt on the "stalking" charge, **especially inasmuch as Overstreet again refused to properly admonish the jury** in accordance with the hereinabove **"Opinion"** by the Kentucky Court of Appeals in reversing Akers' first conviction. [TT#4, M. Radomile/L. Red Corn/R. Overstreet, 10/28/98, 16:29:20, et seq.][120];

(b) Red Corn intentionally "tampered with the jury" by fraudulently asserting that "**the instructions are the law**", **notwithstanding that the same were both fraudulent and unconstitutional**.[121] [TT#4, L. Red Corn, 10/28/98, 17:03:20];

(c) Red Corn fraudulently "tampered...

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[120] See hereinabove paragraph E-96(c) and footnote [102] thereto; hereinabove paragraph E-104 and footnote [105] thereto; and **TITLE 42 U.S.C. § 1985** [supra, page 16 hereof] and footnotes [10], [11], [12] thereto [id, page 17 hereof]

[121] See: "Fraud" defined [footnote [7], supra, page 13 hereof], i.e., "A **false representation of a matter of fact**, whether by words or by conduct, **by false or misleading allegations, or by concealment of that which should have been disclosed**..., by **false suggestions or by suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false**, whether it be direct falsehood or by inuendo, by speach or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]; **K.R.S. 508.010** [supra, page 34 hereof] and footnote [36] thereto; U.S. CONSTITUTION: ..." (continued, page 159 hereof)

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with the jury" by asserting her fraudulent and unconstitutional definition of "hands and feet" as "dangerous instruments".[122] [TT#4, L. Red Corn, 10/28/98, 17:05:10];

(d) Red Corn further intentionally and fraudulently misled the jury with respect to the definition of "intentionally" as an element of "First degree assault" [TT#4, L. Red Corn, 10/28/98, 17:05:10]; (e) Red Corn intentionally and fraudulently misled the jury with respect to the definition of "intentionally" as an element of "First degree assault" [TT#4, L. Red Corn, 10/28/98, 17:08:10];

(f) Red Corn...

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[121] U.S. CONSTITUTION: (continued from page 158 hereof): "... **ARTICLE I-SECTION 10** [id], i.e., "[1.] **No state shall...pass any** bill of attainer, ***ex post facto* law**, or law impairing the obligation of contracts, or grant any title of nobility." (emphasis added); corresponding footnote [1] "Ex post facto law" defined: "A law passed **after the occurrence of a fact or commission of an act**, which retrospectively changes the legal consequences or relations of such fact or deed. A law is **unconstitutionally "ex post facto"** if it deprives a defendant of a defense to criminal liability that he had prior to enactment of the law. State v. Rogers, Ohio Com.Pl., 346 N.E.2d 352, 361. Art. I, § 9(CL3) and § 10 of U.S. Const. prohibit both Congress and the states from passing any ex post facto law. An ex post facto law is defined as a law which provides for the infliction of punishment upon a person for an act done which, when it was committed, was innocent; **a law which aggravates a crime or makes it greater than when it was**

committed; a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed; a law that changes the rules of evidence and receives less or different testimony than was required at the time of the commission of the offense in order to convict the offender; **a law which deprives persons accused of a crime of some lawful protection to which they have become entitled**, such as protection of a former conviction or acquittal ...; **every law which**, in relation to the offense or consequences, **alters the situation of a person to his disadvantage**. Wilensky v. Fields, Fla., 267 So.2d 1, 5." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emph. added)]; **ARTICLE IV-SECTION 2** [id.], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emph. added); and **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [supra, page 16 hereof] and footnotes [10, 11, 12] thereto [id, page 17 hereof]

[122] **Hereinabove footnote** [121] is re-stated herein the same as if set forth in its entirety. **See also**: **K.R.S. 508.010** [supra, page 34 hereof] and corresponding footnote [36] thereto.

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intentionally and fraudulently misled the jury with respect to the definition of "serious physical injury"[123] and the "causative connection" as elements of Akers' "First degree assault" charge. [TT#4, L. Red Corn, 10/28/98, 17:21:45, et seq.];

(g) Red Corn intentionally and fraudulently misled the jury with respect to the definition of "Assault in the first degree"[124] [TT#4, L. Red Corn, 10/28/98, 17:23:10, et seq.];

(h) Red Corn intentionally and fraudulently confused the jury with respect to the charges for which Akers was on trial by making references to fraudulent "subsequent/other bad acts" alleged to have been committed by Akers and which, **even had they been true, would have been completely irrelevant** to Akers' indicted charge of "First degree stalking"[125] [TT#4, L. Red Corn, 10/28/98, 17:31:05, et seq.];

(i) Red Corn further capitalized on her fraudulent introduction of evidence as detailed in hereinabove paragraph E-31 and E-110.V(c)(1) and corresponding footnote [108], and then fraudulently misrepresenting the facts with respect thereto [TT#4, L. Red Corn, 10/28/98, 17:35:25, et seq.]; and

(j) Red Corn intentionally and fraudulently misled the

jury with respect...

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[123] Hereinabove footnote [121] is re-stated herein the same as if set forth in its entirety. See also: **K.R.S. 508.030** [supra, page 34 hereof] and corresponding footnote [37] thereto.

[124] Hereinabove footnote [121] is re-stated herein the same as if set forth in its entirety. See also: **K.R.S. 508.010** [supra, page 34 hereof] and corresponding footnote [36] thereto.

[125] Hereinabove footnote [121] is re-stated herein the same as if set forth in its entirety. See also: **K.R.S. 508.140** [supra, page 34 hereof] and corresponding footnote [38] thereto.

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to the time period "First Degree stalking" charge **in violation of the doctrines of *res judicata* and/or double jeopardy** [TT#4, L. Red Corn, 10/28/98, 17:44:50.

X. *PENALTY PHASE*:

(a) Red Corn, under sanction of Overstreet, "tampered with the jury" by, ***inter alia***, misleading them with respect to "parole eligibility" guidelines [TT#4, L. Red Corn/R. Overstreet, 10/28/98, 18:30:00]; and

(b) Red Corn, with the guidance and sanction of Overstreet, fraudulently introduced evidence to the jury to the effect that Akers had previously been convicted of "Assault in the first degree" [TT#4, L. Red Corn/R. Overstreet, 10/28/98, 18:31:20] and, thereby, further "tampered with the jury" with an overt attempt to improperly influence the jurors with respect to Akers' sentencing.[126]

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[126] See: "**Tampering with jury**" (footnote [8] hereof), i.e., "...The act of attempting to influence a juror corruptly by...persuasions, entreaties, ...or **any other means except the production of evidence in open court**. *See e.g.* 18 U.S.C.A § 1503, 1504." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988

(emphasis added)]. **See also**: "**Tamper**" (footnote 9 hereof): "To meddle so as to alter a thing, especially to make illegal, **corrupting or perverting changes**" [id.]; **K.R.E. 103. RULINGS ON EVIDENCE** [supra, page 39 hereof], i.e., "(c) **Hearing of Jury. In jury cases, proceedings shall be conducted**, to the extent practicable, **so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements** or offers of proof or asking questions **in the hearing of the jury**." (emphasis added); **K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES**: "**(a) Character Evidence Generally** [id., page 40 hereof], i.e., **Evidence of a persons character is not admissible** for the purpose of proving action in conformity therewith on a particular occasion, **except**: (1) *Character of accused*: Evidence of a pertinent trait of character or of the general moral character **offered by the accused**...; **(b) Other Crimes, Wrongs, or Acts**. Evidence of other crimes, wrongs, or acts **is not admissible** to prove the character of a person in order to show action in conformity therewith. ...**(c) Notice Requirement**. In a criminal case, if the prosecution intends to introduce evidence pursuant to subdi-vision (b) of this rule as a part of its case in chief, it **shall give reasonable**..." (continued, page 162 hereof)

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111. On October 28, 1998, Akers was **again** convicted in the Fayette Circuit Court on one (1) count each of "First Degree Assault" and "First Degree Stalking", as indicted, and the jury then recommended sentences of ten (10) years and one (1) year, respectively, **to be served concurrently**, for a total sentence of ten (10) years imprisonment.

112. (a) November 23, 1998, **Akers was again haled before Overstreet for "Final Sentencing"** [see Exhibit "WWW" hereto]; (b) Akers' "Motion to Proceed Pro Se", and "Motion for Mistrial/New Trial" pursuant to [the Kentucky Rules of Court] **CR 59.03, K.R.E. 401** in conjunction with **K.R.E. 402** and **K.R.E. 404(2)**" were "**OVERRULED**" by Overstreet [CP#1, R. Overstreet, 11/23/98, 10:17:15, et seq.]; (c) Overstreet then imposed **her "final sentence" of ten years for Count One (i.e., "First degree assault" and one year for Count Two (i.e., "First degree stalking")**, respectively, **to be served concurrently** [CP#1, R. ...

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[126] **K.R.E. 404(b)** (continued from page 161 hereof): "... **pretrial notice to the**

defendant of its **intention** to offer such evidence. **Upon failure of the prosecution to give such notice the court may** exclude the evidence offered under subdivision (b) or for cause shown may excuse the failure to give such notice and **grant the defendant a continuance or such other remedy as necessary to avoid unfair prejudice caused by such failure.**" (emph. added); **K.R.E. 1101. APPLICABILITY OF RULES** [id.], i.e., "**(a) Courts**. These rules apply to **all the courts of this Commonwealth in the actions, cases, and proceedings** and to the extent herein-after set forth. ...**(c) Rules on Privileges**. The rules with respect to **privileges apply at all stages of all actions, cases, and proceedings**." (emphasis added); **in conjunction with U.S. Const. Amend. 5** [supra, page 7 hereof], i.e, "No person shall...**be deprived of**...**liberty**, or property, **without due process of law.**" (emphasis added); and **U.S. Const. Amend. 14** [id., page 10 hereof], i.e., "**No State** shall...deprive **any person of life, liberty, or property, without due process of law**." (emphasis added); and **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [supra, page 16 hereof] and footnotes [10, 11, 12] thereto [id, page 17 hereof].

Overstreet, 11/23/98, 10:16:29, et seq.], stating as her reasons therefor, that: (i) "the court believes there is a substantial risk that [Akers] would commit another crime"; (ii) "due to [Akers] prior record"; (iii) "due to [Akers'] 'alcoholism'; (iv) "due to [Akers] position of trust **at time of the trial** (sic) **crime**"; (v) "due to the violent..., dangerous..., deliberate nature of the crime"; & (vi) "due to what the court perceives as a very 'anti-social attitude'"[127]; and (d) **again denied Akers' "Motion for Bail on Apeal" in the amount of "$7,500 Full Cash"** as in hereinabove paragraphs E-82, E-83 & corresponding footnote [82] thereto, E-90 & corresponding footnote [95] thereto, E-92, E-93, E-96, E-99 & corresponding footnote [103] thereto. [CP#1, J. Akers/M. Radomile/K. Overstreet, 11/23/98, 10:16:29, et seq.]

113. **Having been denied any "Bail on Appeal" by Overstreet** [see hereinabove paragraph E-113(d)]; (a) on January 18, 1998, Akers filed his "Application for Bond Pending Appeal" [Exhibit "XXX" hereto] with the Kentucky Court of Appeals pursuant to **RCr 12.82** citing substantial bases for the granting thereof including, **but not limited to**: (i) that **[Overstreet] had, for all intents and purposes, ignored the Court of Appeals Opinion which reversed Akers' prior convictions** for the same charges and under the same indictment [id., paragraphs 1 thru

4]; (ii) that...

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[127] Overstreet's allegations are **simply not suppported by the facts**, and **further demonstrate all of Akers' hereinabove assertions with respect to, *inter alia*, Overstreet's bias, tyranny, and oppression. See also: U.S. Const. Amendment 14** [id., page 10 hereof]; and, ***inter alia***, hereinabove paragraphs E-82 through E-86, E-90, E-94 through E-98, E-104, E-103 through E-112 together with the hereinafter paragraphs E-119 through E-123.

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there was a "substantial liklihood" that Akers' conviction for "First Degree Assault" would again be reversed as a result of Overstreet's such acts of contempt [id., paragraphs 5 & 6]; (iii) that there was a "real possibility" that Akers had already served in of excess any sentence which would likely stand [id., parapraph 7]; (iv) that Akers' prior criminal record was all but negligable [id., paragraph 8]; (v) there was no evidence whatsoever to allege or suspect that Akers would be a threat to anyone [id., paragraphs 9 & 10]; and (vi) there was no basis to allege or even suspect that Akers would fail to appear at any court proceedings [id., paragraph 11].

114. On March 8, 1994, Akers' said "Application for Bond Pending Appeal" [Exhibit "XXX"] was "**DENIED**" by the Kentucky Court of Appeals for no stated reasons [Exhibit "YYY" hereto].

115. On July 30, 1999, the Assistant Attorney General for Kentucky, Todd D. Ferguson (hereinafter "Ferguson"), performed his "chain-like" function[128] in furtherance of those conspiracies as outlined in hereinabove paragraphs A-2, A-3(f), E-12 thru E-14, E-16, E-24, E-35, E-36, E-38, E-40 thru E-45, E-47 thru E-49, E-50(a), (d), (e), & (f), E-56(a), (b), & (e), E-61, E-64 thru E-67, E-72 thru E-77, E-81 thru E-96, E-99, E-103, E-104, E-107, E-108, E-110 thru E-115, together with all corresponding footnotes thereto, by filing and serving his "Brief for Appellant" [Exhibit "ZZZ"], and **attempting** to...

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[128] **See: TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [supra, page 16 hereof] and footnotes [10], [11], & [12] thereto [id, page 17 hereof]

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mislead the Kentucky Court of Appeals in presenting **totally unfounded, unsupported, and/or outright fraudulent** "Counter-statements of Facts" including, **but not limited to**:

(a) that "[Akers] grabbed [Bishop] by the hair of the head and began hitting and kicking her. He dragged her by the hair into the hall, where he threw her against the wall and continued to hit her in the face and kick her legs. The impact of her head as it hit the wall caused an indention the size of a basketball in the drywall." [page 2, lines 7 thru 11; page 11, lines 21 thru 25] "[Bishop's] lip was busted swollen and bleeding." [id, lines 15 & 16];

(b) "Prior to the assault of May 4, 1994, Bishop had no history of neck or back problems." [page 5, lines 4 & 5; Page 11, lines 26 thru 29];

(c) "...it was [Dr. Vaughn's] expert medical opinion that [Bishop's] disks [had] ruptured as a result of the incident that occurred on May 4, 1994." [id, lines 14 & 15];

(d) In early June [1994], ...[Akers] began calling Bishop at work, calling her parents, her priest, her divorce attorney, her two brothers, and her boss." [id, lines 19 thru 21];

(e) "...evidence concerning the events that transpired on May 4, 1994, together with medical evidence...was sufficient to establish that [Akers'] intentional acts caused Bishop to suffer a 'serious physical injury' [page 12, line 23 thru page 13, line 3]; "II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING INTO EVIDENCE [AKERS' ALLEGED] PRIOR ACTS OF VIOLENCE AND ABUSE OF BISHOP" [id, lines 3 thru 7];

(f) "Here, in the original appeal, [the Kentucky Court of Appeals] held...

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that the prior bad acts evidence was relevant and probative with regard to the stalking charge." [page 17, lines 7 & 8];

(g) "...the evidence of acts which occurred after expiration of the DVO in May 1995, ...were admissible as evidence of KRE 404(b) to show intent." [id., lines 18 thru 21];

(h) "The trial court did not abuse its discretion in allowing said evidence in at trial." [page 18, lines 7 & 8]; and

(i) "The doctrine of law of [this] case would seem to preclude [Akers] from arguing on retrial that the two charges should have been severed (sic)." [page 22, lines 17 thru 19].[129]

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[129] See: **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally** [supra, page 13 hereof], i.e., "(a) Whoever **corruptly...endeavors to influence or impede any** grand or petit juror, or **officer in or of any court of the United States, ...or endeavors to influence, obstruct, or impede, the due administration of justice,** shall be punished as provided in subsection (b)." (emph. added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute,** ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,** shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id.] (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire**...for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce,** the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy,** whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added); and **"Fraud" defined**: "...A generic term, embracing all multifarious means which human ingenuity can devise, ...**to get advantage over another by false suggestions or by suppression of the truth.** ..." (continued, page 167 hereof)

116. **Having <u>again</u> been denied <u>any form of</u> bail on appeal,**[130] on June 22, 1999, Akers filed his petition for "Writ of Habeas Corpus" with the United States District Court, Eastern District of Kentucky, citing substantial grounds for issuance thereof and immediate release thereon. [see Exhibit "AAAA" hereto]

117. On August 30, 1999, Ferguson continued in his "chain-like" function in furtherance of those conspiracies as outlined in hereinabove paragraphs A-2, A-3(f), E-12 thru E-14, E-16, E-24, E-35, E-36, E-38, E-40 thru E-45, E-47 thru E-49, E-50(a), (d), (e), & (f), E-56(a), (b), & (e), E-61, E-64 thru E-67, E-72 thru E-77, E-81 thru E-96, E-99, E-103, E-104, E-107, E-108, and E-110 thru E-115, and with all corresponding footnotes thereto, by filing and serving his "Answer and Response..." thereto [see Exhibit "BBBB"], and fraudulently asserting[131], ***inter alia***, that:

(a) "A state prisoner has no absolute federal right to bail pending appeal." [page 4, "Memorandum of Law", lines 2 & 3]; <u>and</u>

(b) "...the trial court exercised its sound discretion in...

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[129] <u>"Fraud" defined</u> (continued from page 166 hereof): "... As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false**..." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

[130] See hereinabove paragraphs E-90 and corresponding footnote [95] thereto, E-92, E-93, E-99 and corresponding footnote [103] thereto, E-113(d), <u>and</u> E-114.

[131] Hereinabove paragraph E-90 together with corresponding footnote [96] thereto are re-stated herein the same as if set forth in their entirety. <u>**See also**</u>: **Ky Const 15. Laws to be suspended only by General Assembly** [supra, page 27 hereof], i.e., "**No power to suspend laws shall be exercised <u>unless by the General Assembly</u> or its authority.**" (emphasis added)

denying [Akers] bail on appeal and **it cannot be said that the trial court abused its discretion**."[132] [id., lines 9 thru 11].

118. (a) On April 13, 2000, Akers was transported back to "Domestic Relations/Domestic Violence Division" of Fayette [Kentucky] District Court for the **ludicrous purpose of, once again, allowing Bishop to be granted yet another three-year "extension"** of that "Domestic Violence Order" as detailed in hereinabove paragraphs E-32, E-38, & E-65. (b) Notwithstanding Akers **clearly-stated eternal willingness to have "no contact or communication" with Bishop and "to remain as far away from her as possible (i.e., in a different state)"**; & (c) Akers' **simple request** that the "**CAUTION: 'Weapon involved'** [and] **'Believed to be armed/dangerous'" be deleted therefrom**; (d) Fayette District Judge Pamela D. Goodwine nevertheless **issued Bishop's requested "Domestic Violence Order" effective through April 13, 2000** [see Exhibit "CCCC" hereto], **and ignored Akers' pleas** to not further "defame [his] character" and "endanger [his] safety" by alleging those "Cautions" detailed in hereinabove subparagraph (c).[133]

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[132] **See (in stark contrast)**: Hereinabove paragraphs E-82 through E-86, E-90, E-94 through E-98, E-104, E-108 through E-113 together with all corresponding footnotes thereto, respectively; and hereinafter paragraphs E-121 through E-125 together with all corresponding footnotes thereto, respectively.

[133] Hereinabove paragraph E-90 together with corresponding footnote [96] thereto are re-stated herein the same as if set forth in their entirety. **See also**: **ARTICLE I-SECTION 9, U.S. Constitution** [supra, page 6 hereof] and footnote [1] thereto; **U.S. Const. Amend. 5** [supra, page 6 hereof]; **U.S. Const. Amend. 14** [supra, page 10 hereof]; **ARTICLE 1, SECTION 8, Constitution of Tennessee** [supra, page 18 hereof]; **Ky Const 19** [supra, page 28 hereof]; **Ky Const 24** [id.]; **Ky Const 26** [id.]; and **K.R.S. 403.750(2)** together with corresponding footnote [31] thereto [supra, page 30 hereof].

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119. On May 19, 2000, the Kentucky Court of Appeals then rendered its **second "Opinion Affirming in Part, Reversing in Part"** [Exhibit "DDDD" hereto] which states, in

hereunto relevant part, as follows:

> "**On remand from this Court's decision**, Akers moved in limine to exclude evidence of certain bad acts. We have scrutinized the record and watched videotape of the hearing on the motion in limine. **It is clear that the trial court failed to follow the instructions on remand.**
>
> The court heard arguments from both sides as to the admissibility of the evidence. **Prior to making its ruling, the court acknowledged that it had not read our decision.**" (Page 15, lines 3 through 15)
>
> "At trial, the court permitted the introduction of extensive evidence of Akers' stalking of Bishop. **While this evidence was relevant to the first-degree stalking, it was not relevant to the count of first-degree assault.**" (Page 15, lines 17 through 21)
>
> "Despite the fact that the trial court used some of the correct vernacular during the hearing on the motion in limine, it failed to properly analyze the admissibility of other bad acts using the **Bell** test. **Without reading our decision the court could not have followed our directives.**" (Page 16, lines 4 through 10)
>
> "For the first-degree stalking charge, **the trial court might have admitted a portion of the evidence with a proper admonition.**" (Page 16, lines 13 through 15, emphasis added)
>
> "**The evidence of the stalking undoubtedly tipped the scales and convinced the jury that Akers had committed first degree assault.** While our opinion following Akers' first trial did not specifically so require, **the trial court should have granted Akers separate trials on each count.**" (Page 20, lines 7 thru 11, emphasis added)

> "...**a trial court may not use joint trials at the expense of a defendant's right to a fair trial**." (Page 21, 1 & 2, emphasis added)
>
> "**Fairness and justice require us to reverse [Akers'] conviction of first-degree assault** and remand the case for a new trial." (Page 21, lines 10 thru 12, emphasis added)

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> "Accordingly, ...**Akers' conviction of first-degree assault is reversed and this case is remanded with instructions to grant Akers a new trial at which evidence of prior bad acts shall be excluded**." (Page 21, lines 14 through 17)

120. The hereinabove "Opinion Affirming in Part, Reversing in Part" became "**FINAL**" on June 19, 2000, as a result of **neither party having filed for "Discretionary Review"** of/by the Kentucky Supreme Court; and the **Assistant Commonwealth's Attorney (Red Corn) adamantly refused to accept or tender any reasonable offer** as to "final resolution" of this **bizarre and outrageous case**.

121. **Facing the likely prospect of being transferred back to Fayette County Detention Center and being further subjected to the tyranny and oppression of Red Corn and Overstreet for an astounding third time around**[134], and under threat that Overstreet would refuse to reinstate Akers' **originally set pre-trial bail for "First-Degree Assault" in the amount of $7,500 Full Cash** (see hereinabove paragraph E-72) **in clear and distinct violation of Article IV-Section 2** and the **Eighth & Fourteenth Amendments** of/to the **United States Consitution; §§ 2, 3, 11, 12, 16, 17, ...**

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[134] See: **FIFTH AMENDMENT** to the **United States Constitution** and corresponding footnote [2] [supra, page 6 hereof]; **14th AMENDMENT to the**

United States Constitution and corresponding footnote [3] [id., pages 8 & 9 hereof]; and **Benton v. Maryland, 89 S.Ct. 2056 (1969)**, i.e., "9. **Double jeopardy prohibition** of the **Fifth Amendment represents fundamental ideal in constitutional heritage and it applies to the states through the Fourteenth Amendment; overruling Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149, U.S.C.A. Const. Amends. 5, 14.** ...11. **Idea underlying constitution prohibition against double jeopardy is that state with all its resources and powers should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrasment, expense and ordeal and compelling him to live in a continued state of anxiety and insecurity, as well as enhancing possibility that even though innocent he may be found guilty. U.S.C.A.Const.Amend.5.**" (emphasis added)

19, & 26 of the **Constitution of Kentucky**; and **RCr 4.04(d)(ii), RCr 4.16, & RCr 4.54(3)** of/to the **Kentucky Rules of Criminal Procedure** as was the case following the **first reversal of Akers' convictions**[135]; on July 7, 2000, Akers was **forced to enter a plea of "guilty" for "Assault under extreme emotional disturbance"** [Exhibit "EEEE"] a "**Class D Felony**" [see K.R.S. 508.040(2)(a), page 35 hereof] **as, apparently, the only means** of escaping the "oppression" of Bishop, Red Corn, Overstreet, ***et al***, and **finally securing Akers' liberty**.

122. Notwithstanding the foregoing facts, which **clearly demonstrate that any imprisonment of Akers was unconstitutional, unlawful, and improper, *ab initio***[136]; (a) Akers "served" a total imprisonment of **ONE THOUSAND, THREE HUNDRED, THIRTY-FIVE (1,335) DAYS** pursuant to his hereinabove alleged "crimes", **during which**: (b) Akers was subjected to the ominous and perpetual threats of:

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[135] See hereinabove paragraphs E-89 together with corresponding footnote [94], E-90 together with corresponding footnote [96], E-92, E-93, E-96, E-99 together with corresponding footnote [103], E-110 through E-112, E-113(d) together with footnote [127], E-116 together with footnote [131], and E-119. **See also**: **801 SW(2d) 321 (Ky 1990), Ingram v Commonwealth**, i.e., "**The Kentucky Constitution is superordinate to legislative intent...**" (emphasis added)

[136] **See**: **K.R.S. 509.020 Unlawful imprisonment in the first degree** [supra,

page 36 hereof], i.e., "(1) A person is guilty of unlawful imprisonment in the first degree when he **knowingly and unlawfully restrains another person under circumstances which expose that person to risk of serious physical injury**. (2) Unlawful imprisonment in the first degree is a Class D felony." (emphasis added). **See also**, ***inter alia***: **TITLE 18 U.S.C. § 1201** [supra, page 12 hereof] and/or **TITLE 18 U.S.C. § 1203** [id.]; **TITLE 18 U.S.C. § 1503** [id., page 13 hereof] and/or **TITLE 18 U.S.C. § 1512** [id., page 14 hereof]; **TITLE 18 U.S.C. §§ 1961, et seq.** [id.] and/or **TITLE 42 U.S.C. § 1983** [id., page 16 hereof] and/or **TITLE 18 U.S.C. § 1985** [id.] **in conjunction with TITLE 18 U.S.C. § 2** [id.] and/or **TITLE 18 U.S.C. § 3** [id.] and/or **TITLE 18 U.S.C. § 4** [id.] and **TITLE 18 U.S.C. § 5** [id.].

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(i) **serious physical injury** and/or **death**, (ii) **numerous life-threatening** and/or **permanently debilitating diseases**, (iii) **extortion** and/or **blackmail**, (iv) **irreparable injury to both his personal and business reputation and career, as well as** (v) **irreparable injury to Akers' overall prospects for any quality of life; yet** (c) Akers had **not been a subject of even a single "disciplinary action"** during his **entire term of imprisonment.**

123. Notwithstanding the foregoing facts, which **clearly demonstrate that any imprisonment of Akers was unconstitutional, unlawful, and improper, *ab initio*[136]**, Akers "served" a total of **ONE THOUSAND NINETY-FOUR (1,094) DAYS** imprisonment **in excess of** any **which could have lawfully resulted from any of his alleged "criminal conduct".**

124. Notwithstanding the foregoing facts, which **clearly demonstrate that any imprisonment of Akers was unconstitutional, unlawful, and improper, *ab initio*[136]**, Akers "served" **in excess of ONE HUNDRED EIGHTY (180) DAYS** for his "convictions" [See Exhibit "FFFF"] which remain effective as of filing of this "MEMORANDUM & MEMORANDUM OF LAW" and accompanying civil action.

125. Notwithstanding the foregoing facts, which **clearly demonstrate that any imprisonment of Akers was unconstitutional, and unlawful, *ab initio*[136]**, as of September 21, 1995, Akers had sustained injuries to his business, i.e., Coleman/Akers & Akers, Inc. (C/AA), and his personal property, in an aggregate amount **in excess of EIGHT HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS**

($860,000.00) as the proximate result of those unconstitutional

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and/or unlawful acts of/by the named Defendants as hereinabove set forth, **in detail**.

126. Notwithstanding the foregoing facts, which **clearly demonstrate that any imprisonment of Akers was unconstitutional, unlawful, and improper**, ***ab initio*** [136], Akers sustained a **permanent forty percent (40%) loss and/or impairment of hearing** abilities **as a proximate result** of those unconstitutional and/or unlawful acts of/by the named Defendants as set forth herein, **in detail**.

127. Notwithstanding the foregoing facts, which **clearly demonstrate that any imprisonment of Akers was unconstitutional, unlawful, and improper**, ***ab initio*** [136], as of filing of the within "MEMORANDUM & MEMORANDUM OF LAW" and accompanying civil action, **Akers has sustained, and will continue to sustain** on a perpetual **and indeterminate basis**, injuries to his businesses, hereinabove "Cadre" and/or "Akers & Akers of Tennessee, Inc." (hereinafter "AAT"), **and in his personal property, in an amount in excess of THREE MILLION, TWO HUNDRED SEVENTY-TWO THOUSAND AND NO/100 DOLLARS ($3,272.000.00) as the proximate result** of those said unconstitutional and unlawful acts of/by the named Defendants.

ARGUMENTS

128. See "**CLAIM(S) FOR RELIEF**", "**CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(C), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3)**", "**COUNT ONE**" through "**COUNT TWENTY-EIGHT**", pages 96 through 128 thereof, filed contemporaneously herewith, i.e., no further "Arguments" are necessary.

CONCLUSION

129. See "**PRAYER(S) FOR RELIEF**", "**CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(C), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3)**" filed contemporaneously herewith, pages 128 and 129 thereof, i.e., no further "Conclusions" are necessary.

VERIFICATION

COMES THE PLAINTIFF, James G. Akers, **without counsel**, and hereby verifies that, to the best of my knowledge, information, and belief, all "facts" represented hereinabove are true; & further accurately represent those events encompassed therein as they occurred and as relate to claims asserted in the herewith accompanying and contemporaneously-filed "**CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(C), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3)**".

s/ James G. Akers
JAMES G. AKERS, Plaintiff

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove James G. Akers has personally appeared before me on this, the 21st day of November, 2000, has acknowledged the foregoing, and subscribed his signature thereto in my presence.

s/ Jill C. Rosenberry
NOTARY PUBLIC, State-at-large

My commission expires: 09/05/2004

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff, V. CAROLYN P. BISHOP, et al, Defendants.**"; (2) I am a **citizen** of the **United States of America** and the **State of Tennessee** therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true and accurate copy of the foregoing "**MEMORANDUM & MEMORANDUM OF LAW**", together with all "Exhibits" thereto in the form of "**APPENDIX**"/**RELEVANT "EXHIBITS"** pursuant to the civil action styled "**JAMES G. AKERS, Plaintiff, V. CAROLYN P. BISHOP, et al, Defendants.**", via "**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**", on the named Defendants as follows: **(Listing of served Parties and/or respective Counsel-of-Record omitted from instant Petition for Writ of Certiorari. See official record for listings.)**

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 21st day of November, 2000, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Jill C. Rosenberry
NOTARY PUBLIC, State-at-large
My commission expires: 09/05/2004